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सं. 3] नई दिल्ली, फरवरी 3—फरवरी 9, 2013, शनिवार/माघ 14—माघ 20, 1934
 No. 3] NEW DELHI, FEBRUARY 3—FEBRUARY 9, 2013, SATURDAY/MAGHA 14—MAGHA 20, 1934

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
 Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
 PART II—Section 3—Sub-section (iii)

केन्द्रीय अधिकारियों (संघ राज्य क्षेत्र प्रशासनों को छोड़कर) द्वारा जारी किए गए आदेश और अधिसूचनाएं
 Orders and Notifications Issued by Central Authorities (other than the Administrations of Union Territories)

भारत निर्वाचन आयोग
 नई दिल्ली, 7 फरवरी, 2013

आ. अ. 9.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 2/2009 में दिये गये उच्च न्यायालय, पटना के तारीख 1 मई, 2012 के आदेश को प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/बिहार/(2/2009)/2010]

आदेश से,
 आर. के. श्रीवास्तव, प्रधान सचिव

ELECTION COMMISSION OF INDIA

New Delhi, the 7th February, 2013

O.N. 9.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the 1st May, 2012 of the High Court of Judicature at Patna in Election Petition No. 2 of 2009.

**IN THE HIGH COURT OF JUDICATURE AT
 PATNA**

Election Petition No. 2 of 2009

In the matter of an application under Sections 80, 80A and 81 of the Representation of the People Act, 1951

GOPAL KRISHNA VERMA, SON OF LATE SAHDEO PRASAD VERMA @ LATE SAHDEO VERMA, RESIDENT OF VILLAGE GAJIPUR BAZAR, P.O. TARAPUR, P.S. TARAPUR, DISTRICT MUNGER

... Petitioner/s

Versus

RAJIV RANJAN SINGH @ LALAN SINGH, SON OF SRIJWALA PRASAD SINGH, RESIDENT OF 50, BUDHA COLONY, P.S. BUDHA COLONY, PATNA-1, DISTRICT PATNA

... Respondent/s

Appearance :

For the Petitioner/s : Mr. S.B.K. Manglam, Advocate

For the Respondent/s : Mr. S.N.P. Sharma, Sr. Adv., Amrendra Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE V.N. SINHA
C.A.V.JUDGMENT

V.N. Sinha, J

This election petition under Sections 80, 80A and 81 of the Representation of the People Act (hereinafter referred to as the Act) has been filed challenging the election of sole respondent from 28-Munger Parliamentary Constituency held on 30-04-2009 on the ground that both the nomination paper of the election petitioner bearing Nos. 56, 57 for contesting the said election was improperly rejected by the Returning Officer under order dated 11-04-2009 on the ground that the name of his 10th proposer, namely, Sri Shailesh Kumar is not available in the electoral roll of part no.19, serial no.1175 of 165-Munger (General) Assembly Constituency as has been stated in the Nomination Form, as there are only 921 electors named in the said part of the electoral roll of 165-Munger (General) Assembly Constituency. Before rejecting the nomination paper neither such error was pointed out to the petitioner by the Assistant Returning Officer who received the nomination paper nor the Returning Officer granted the petitioner sufficient indulgence to remove the defect and thereby infracted sub-section (4) of Section 33 and sub-section (5) of Section 36 of the Act. Nomination paper of the election petitioner being improperly rejected, the election of the sole respondent returned candidate from the said constituency is fit to be declared as void.

2. In support of the aforesaid plea election petitioner averred in the election petition that he filed his two sets of nomination paper for the aforesaid election on 9-4-2009 at 2.48 P.M., which was received by the Assistant Returning Officer, who handed over the nomination papers to the Assistants and other officers present to assist the Assistant Returning Officer in receiving the nomination papers. The Assistants and Officers present to assist the Assistant Returning Officer cross-checked the contents of nomination paper including the entries made therein and the required documents filed with the nomination paper. After being satisfied that there was no defect in nomination paper petitioner was granted two receipts and check list dated 9-4-2009, Annexures-1, 1/1 and 2 annexed with the election petition asking him to appear for scrutiny on 11-4-2009 at 11 A.M. In paragraph 13 of the election petition categorical assertion has been made by the election petitioner that at the time his nomination paper was received by the Assistant Returning Officer on 9-4-2009 at 2.48 P.M. and verified by the Assistants present to assist him, whereafter receipts and check slip dated 9-4-2009 was issued to the petitioner no defect about the part, serial number of his 10th proposer was pointed out by the Assistant Returning Officer, which was disclosed for the first time by the Returning Officer when he took up the nomination paper of the petitioner for security. In paragraph 15 statement has been made that petitioner was shocked and surprised to learn about the defect in his nomination paper from the Returning Officer and

immediately informed the Returning Officer that at the time of presentation/receipt of his nomination paper by the Assistant Returning Officer part, serial number of his proposers were verified by the Assistants present to assist the Assistant Returning Officer in receiving the nomination paper but neither the Assistants nor the Assistant Returning Officer ever pointed out any defect about the part, serial number of any of his proposers in the nomination paper. Further statement made by the petitioner in the said paragraph is that having learnt about the defect, he requested the Returning Officer to furnish the electoral roll of part nos.17, 18 and 19 of 165-Munger (General) Assembly Constituency so as to enable him to correct the mistake but the Returning Officer gave the petitioner electoral rolls of part nos. 17 and 19 only. In paragraphs-16, 17 of the election petition statement has been made that having gone through the electoral roll of part nos.17 and 19 of 165-Munger (General) Assembly Constituency petitioner could not locate the name of his 10th proposer Sri Shailesh Kumar at serial no.1175 of part nos. 17 and 19, whereafter petitioner requested the Returning Officer time and again to furnish the voter list of part no.18 of 165-Munger (General) Assembly Constituency but the Returning Officer refused to furnish the same, whereafter petitioner requested the Returning Officer to grant him time till the next day so as to enable him to remove the defect about his 10th proposer but the Returning Officer granted him 15 minutes to remove the defect in the nomination paper. In paragraph 18 of the election petition petitioner has stated that for removing the defect in the nomination paper within 15 minutes the time granted by the Returning Officer he rushed to the office of the District Election Officer, Munger, to find out the correct serial number of his 10th proposer in the voter list. In paragraphs 19, 20, 21 of the election petition election petitioner has stated that no sooner voter list of part no. 18 of 165-Munger (General) Assembly Constituency was made available by the office of the District Election Officer he found out the name of his 10th proposer at the same serial i.e. 1175, after finding out the correct part number of his 10th proposer, petitioner rushed back to the office of the Returning Officer within half an hour while the process of scrutiny of the nomination paper of other candidates was still in progress. No sooner the scrutiny of nomination paper of the particular candidate which was in progress at the time petitioner re-entered the office of the Returning Officer was over he intervened and informed the Returning Officer that the name of his 10th proposer Sri Shailesh Kumar is found at the same serial number as mentioned in the nomination paper but in part no. 18 of the electoral roll which has inadvertently been stated in the nomination paper as part no. 19. The Returning Officer did not listen to the request of the petitioner and proceeded with the scrutiny of nomination paper of other candidates. Petitioner made repeated request before the Returning

Officer to permit him to correct the part number of his 10th proposer in the nomination paper to avoid rejection of nomination paper on technical ground but the returning Officer neither himself corrected the part number of the 10th proposer nor allowed the petitioner to correct the same. In paragraph-22 of the election petition it has been stated that when petitioner put pressure on the Returning Officer to allow him to correct the part number of his 10th proposer the Returning Officer asked the petitioner to try his luck again in the next election and further stated that neither he would correct the part number of his 10th proposer in the nomination paper nor would he allow the petitioner to correct the same. Highlighting the aforesaid partisan attitude of the Returning Officer election petitioner submitted petition dated 11, 12, 13-4-2009 with enclosures before the Returning Officer, copy whereof was also sent to the Chief Electoral Officer, Bihar and the Chief Election Commissioner of India, New Delhi through fax, Annexures-3, 7. In paragraph-46 of the election petition petitioner has stated that he applied for supply of certified copy of some documents, namely, the attendance register of candidates who appeared for scrutiny maintained by the Returning Officer, certified copy of nomination paper of all the contesting candidates with the documents filed by them, copy of his application dated 11, 12, 13-4-2009 filed before the Returning Officer through fax praying therein to accept his nomination paper and duplicate of compact video disc of the process of scrutiny of nomination paper etc. through fax vide application dated 16-4-2009 addressed to the Returning Officer stating therein that the copying section in the collectorate is closed with further request to guide him the way for obtaining certified copy of the aforesaid documents.

3. By filing written statement sole respondent pleaded that the election petition is fit to be dismissed for non-compliance of the mandatory provisions of Sections 81, 82 and 117 of the Act under Sub-section-(1) of Section 86 of the Act for the failure of the election petitioner to serve on the sole respondent true copy of the election petition filed in this Court as there are various discrepancy in the petition filed in this Court and the copy which has been served on the sole respondent. In paragraphs-4, 5 of the W.S. sole respondent has stated that election petitioner failed to make adequate statement of material facts as also to furnish any contemporaneous document to support his false allegation and in such circumstances election petition is fit to be dismissed summarily under order 7 Rule 11 of the Code of Civil Procedure. In paragraph-10 of the W.S. sole respondent has stated that part, serial number of the 10th proposer of the election petitioner as mentioned in nomination paper did not find place in the concerned voter list of 165-Munger(General) Assembly Constituency. In paragraph-11 of the W.S. statement has been made that the Returning Officer after examining the two sets of nomination paper of the election petitioner read with concerned voter list pointed out to the petitioner that part,

serial number of his 10th proposer is not correct and does not tally with the concerned voter list. In paragraphs-12, 13 sole respondent dealt with paragraphs, 8, 9 of the election petition and stated that the said statement is incorrect as in fact the Returning Officer/Assistant Returning Officer pointed out that part, serial number of 10th proposer of the petitioner did not tally with part, serial number of the concerned voter list. In paragraph-15 sole respondent disputed the averments made in paragraphs 11 and 12 of the election petition as totally incorrect as according to the sole respondent the Returning Officer provided opportunity to all the candidates to examine the nomination paper of the other candidates. In paragraphs-16, 19, 21, 22 of the written statement the sole respondent disputed the contents of paragraphs-13, 16, 18 and 19 of the election petition as totally incorrect and false as according to the sole respondent Returning Officer/Assistant Returning Officer did inform the petitioner that part, serial number of his 10th proposer is not matching with part, serial number of the 10th proposer as stated in the concerned voter list and story to the contrary, of the petitioner is totally concocted and is only for the purposes of election petition. In paragraph-20 of the W.S. sole respondent denied the contents of paragraph-17 of the election petition and submitted that petitioner never filed any petition before the Returning Officer for grant of one day time by postponing the scrutiny of his nomination paper. In paragraph-23, 24 the sole respondent disputed the contents of paragraphs-20, 21 of the election petition and submitted that petitioner never came back before the Returning Officer during the scrutiny of the nomination paper and statement to the contrary made in the election petition is incorrect and false. In paragraph-25 of the W.S. sole respondent has denied the statement made in paragraph-22 of the election petition as belated statement which is incorrect, false and concocted only for the purposes of election petition. In paragraphs-26, 31 of the W.S. the sole respondent has dealt with paragraph-23 of the election petition and stated that statement under reply is unwarranted, contrary to law as according to the sole respondent Returning Officer does not have any jurisdiction to review the order rejecting/accepting the nomination paper as he becomes functus officio after accepting/rejecting the nomination paper. In paragraphs-27, 28, 29 of the W.S. sole respondent has dealt with paragraphs-24, 25, 26 of the election petition read with Annexure-3 and stated that statement under reply are out and out, afterthought, besides being false. It has further been stated therein that petitioner is not fair in casting aspersion against the Returning Officer which appears to be motivated. In paragraph-30 of the written statement sole respondent has dealt with paragraph-27 of the election petition with Annexures-5, 5/1 and stated that the statement made therein are not to be relied in these proceedings as the same has been made on the basis of self created

document on 11-4-2009 at 6.21 P.M. after rejection of the nomination paper of the election petitioner as also after the process of scrutiny was over. In paragraph-32 of the W.S. sole respondent has disputed the statement made in paragraph-29 of the election petition and has submitted that order rejecting the nomination paper is final, subject to the order passed by the High Court during the trial of the election petition. In paragraph-33 of the W.S. sole respondent has dealt with the averments made in paragraph-30 of the election petition and has stated that the same is incorrect and false and has been averred only for the purpose of filing the election petition because the Returning Officer had given ample opportunity to the election petitioner to remove the defect in the nomination paper but the petitioner failed to furnish the correct part, serial number of his 10th proposer. In paragraph-34 of the W.S. sole respondent has dealt with paragraph-31 with Annexures-7, 7/1 of the election petition and has stated that the averments made therein are unnecessary, uncalled for and contrary to law besides being afterthought. It is also stated in the said paragraph that perusal of contents of Annexure-7 indicates that petitioner even threatened the Returning Officer that he will file election petition challenging the election with prayer to declare the election of the returned candidate as void, although Returning Officer had given ample opportunity to the election petitioner on 11-4-2009 to remove the defect in his nomination paper. In- paragraphs-35, 36 of the W.S. sole respondent dealt with paragraphs-32, 33 and Annexures-8, 8/1, 9 of the election petition and stated that contents of the said paragraphs and the Annexures does not deserve any consideration and are merely the preparation process by the petitioner to file the election petition, which deserves no consideration by this Court. In paragraph-37 sole respondent has stated that contents of paragraph-34 of the election petition are merely repetition. In paragraphs-38, 40 sole respondent has dealt with paragraphs-35, 37 and Annexure-10 of the election petition and stated that contents of the said paragraphs and Annexure are nothing but falsehood and misleading. He has further stated in the said paragraph that at the time of presentation of nomination paper by the petitioner the Assistant Returning Officer examined his nomination paper and pointed out the defect in the nomination paper about part, serial number of his 10th proposer. In paragraphs-39, 42, 51 the sole respondent dealt with paragraphs-36, 39, 48 and 49 and Annexures-11, 12 of the election petition and stated that the statements made therein are totally false and motivated as the election petitioner asked for half an hour time from the Returning Officer to remove the defect in his nomination paper. In paragraph-41 of the W.S. sole respondent has dealt with paragraph-38 of the election petition and stated that interpretation given by the election petitioner of Sub-section-(5) of Section 36 in paragraph-33 is wholly misconceived as the election petitioner in reality had asked the Returning Officer to grant only half

an hour time during scrutiny of the nomination paper so as to enable the election petitioner to remove the defect. In paragraph-43 of the W.S. sole respondent has stated that the contents of paragraph-40 of the election petition is not correct either in fact or law. In the said paragraph it has further been stated that petitioner has wrongly compared checking of nomination paper by the Assistant Returning Officer on its presentation with the scrutiny of nomination paper as the checking of the nomination paper is merely preliminary verification of the nomination paper. It has further been stated in the said paragraph that after verifying nomination paper of the election petitioner with the concerned voter list the Assistant Returning Officer pointed out defect regarding part, serial number of 10th proposer of the petitioner. In paragraph-44 of the W.S. sole respondent dealt with paragraph-41 of the election petition and stated that bare reading of the said paragraph indicates the false prejudice of the election petitioner against the Returning Officer which has nothing to do with the merit of the rejection of his nomination paper. In paragraph-45 of the W.S. sole respondent dealt with paragraph-42 of the election petition and stated that after rejection of the nomination paper only remedy available to the election petitioner was filing of election petition in the light of the provisions of Article 329(b) of the Constitution of India within 45 days of declaration of final result of the election. In paragraphs-46, 47 sole respondent dealt with paragraphs-43, 44, 45 of the election petition and submitted that the contents of the said paragraphs are vague and imaginative. In paragraph 48 of the W.S. sole respondent stated that election petitioner has miserably failed to state primary essential statement of material fact by not annexing the copy of his nomination paper, which suffered from the vice of substantial defect. In such circumstances, according to the sole respondent election petition should have been dismissed summarily under order VII Rule 11 of the Code of Civil Procedure. In paragraph-50 of the W.S. sole respondent stated that statement made in paragraph 46 and 47 of the election petition are nothing but repetition of the old story. In paragraph-52 of the W.S. sole respondent stated that as part, serial number of 10th proposer of the election petitioner, namely, Sri Shailesh Kumar was not correctly stated in the nomination paper and the said defect made it difficult, rather impossible for Returning Officer to ascertain whether the aforesaid 10th proposer of the petitioner was really a voter of the said parliamentary constituency. Aforesaid defect being vital and substantial nomination paper of the election petitioner was fit to be rejected by the Returning Officer under Section 36 of the Act.

4. In the light of the aforesaid pleadings made by the parties, following issues were framed under order dated 8-1-2010:-

- i. Whether, the nomination paper of the petitioner was illegally and improperly rejected by the

Returning Officer for insufficient reason and without compliance of the provisions contained in the Representation of the People, Act, 1951 ?

ii. Whether, the election of the sole respondent is fit to be set aside under the provisions contained in Section 100(1) of the Representation of the People Act, 1951 on the ground that the nomination of the petitioner has been improperly rejected by the Returning Officer at the time of scrutiny of nomination paper?

iii. Whether, election petition as framed is maintainable?

iv. Whether the copy served on the sole respondent is the true copy of the original election petition ? If not, whether the election petition is fit to be dismissed U/s 86(1) of the said Act for non-compliance of Section 81(3) of the R.P. Act, 1951 ?

v. Whether the failure on the part of election petitioner by not enclosing the copy of the nomination paper alleged to have been improperly rejected ? If so, whether the election petition is fit to be dismissed for not furnishing the material facts in his pleading inasmuch as not enclosing the contemporaneous evidence regarding the said allegation?

vi. Whether the nomination paper of the petitioner has been improperly rejected when the nomination paper suffers from substantial defect or not giving the correct part number and serial number of the concerned voter list of the 10th proposer of the petitioner, namely, Shailesh Kumar and also not clarifying the said vital defect occurred in the nomination paper before Returning Officer during time of scrutiny even if an ample opportunity was provided by the Returning Officer to the petitioner?

vii. Whether the nomination paper of the petitioner was further fit to be rejected in view of the statement made in the written statement of the sole respondent accompanied by affidavit of the proposer of the petitioner namely, Manoj Sahni and as such nomination paper was also required to be rejected by the Returning Officer on this additional ground alone that nomination paper does not contain genuine signature of the proposer rather it was forged signature?

viii. Whether the verification and affidavit subscribed by the petitioner regarding election petition is not in accordance with order 6, rule 15 C.P. Code? If not, is the election petition fit to be dismissed in limine?

5. In support of the contents of the election petition election petitioner examined himself as P.W.-1 and supported the contents of the election petition and submitted that his nomination paper in both the sets were received by the Assistant Returning Officer. At the time of presentation of the nomination paper all the 10 proposers accompanied the election petitioner. After petitioner presented his nomination paper the Assistant Returning Officer called out the name of his all the 10 proposers one by one to verify their presence. After verification of the proposers the Assistant Returning Officer passed on the nomination paper to the Assistants present in his chamber to confirm the other requirements of a valid nomination paper. The assistants deputed to assist the Assistant Returning Officer verified the nomination paper of the petitioner and having found the nomination paper valid check list, receipt/notice fixing the date of scrutiny on 11.4.2009 at 11 A.M. was issued to the petitioner by the Assistant Returning Officer which has been marked as Exhibits-1 and 2 in these proceedings. Election petitioner has further averred in his examination in chief that scrutiny of his nomination paper was taken up on 11.4.2009 at about 3 P.M. and the Returning Officer disclosed that the name of his 10th proposer Sri Shailesh Kumar does not find mentioned at serial number of the part number as mentioned in the nomination paper, which surprised the petitioner as the serial, part number of all his 10 proposers was verified by the Assistants deputed to assist the Returning Officer at the time of presentation of his nomination paper and no such defect was pointed out to the petitioner at the time of presentation of the nomination paper. Petitioner himself also looked into the nomination paper and found that the name of his 10th proposer does not find mentioned at serial no.1175 of part no.19 of the voter list of 165-Munger(General) Assembly Constituency, the defect pointed out being clerical election petitioner requested the Returning Officer to furnish the voter list of part nos. 17, 18, 19 so as to enable him to correct the serial, part number of his 10th proposer. The Returning Officer, however, made available the voter list of part no.17 and 19 but did not give the petitioner voter list of part no.18 of 165-Munger (General) Assembly Constituency. Petitioner having gone through the voter list of part nos.17 and 19 of 165-Munger (General) Assembly Constituency could not locate the name of his 10th proposer and made request to the Returning Officer time and again to furnish the voter list of part no. 18 so as to enable the petitioner to locate the name of his 10th proposer and correct the same in the nomination paper but the Returning Officer acted adamant and did not furnish the voter list of part no.18 of 165-Munger (General) Assembly Constituency. In paragraph-9 of the examination in chief petitioner asserted that he requested the Returning Officer to adjourn the process of scrutiny of his nomination paper for the next day so that he may collect the correct serial, part number of his 10th proposer after going through the voter list of 165-Munger

(General) Assembly Constituency but the Returning Officer did not adjourn the process of scrutiny of the nomination paper of the election petitioner to the following day despite his repeated request, virtually petitioner was begging before the Returning Officer for such adjournment. In paragraph-10 of the examination in chief petitioner stated that as the Returning Officer looked adamant not to furnish the copy of the voter list of part no.18 of 165-Munger(General) Assembly Constituency and made up his mind to reject the nomination paper of the election petitioner without providing him opportunity to remove the defect in his nomination paper petitioner had no option but to request the Returning Officer to grant him half an hour time so that he may rush to the District Election office to find out the correct serial, part number of his 10th proposer. In paragraph-11 of the examination in chief election petitioner stated that on his request for grant of at least half an hour to remove the defect, the Returning Officer granted 15 minutes to remove the defect in the nomination paper. In paragraphs-12, 13, 14 it has been stated that petitioner immediately rushed to the District Election Office where voter list of all Assembly constituencies constituting Munger Parliamentary Constituency was available and on his request the voter list of part no.18 of 165-Munger (General) Assembly Constituency was made available to the petitioner and within no time he could locate the correct serial number of his 10th proposer in the voter list of part no.18 of 165-Munger (General) Assembly Constituency and immediately rushed back to the collectorate where scrutiny of nomination paper by the Returning Officer was still in progress. Having reached the place of scrutiny within 20-25 minutes of his departure to find out the correct serial, part number of his 10th proposer petitioner found the Returning Officer still proceeding with the scrutiny of nomination paper of other candidates. No sooner the scrutiny of nomination paper of the particular candidate which was in progress from before was over petitioner informed the Returning Officer that he has found out the correct serial, part number of his 10th proposer and be permitted to correct the same in his nomination paper but the Returning Officer stated that since 15 minutes time was granted for removal of defect and it is almost half an hour he will not permit correction in his nomination paper as the same has already been rejected. In paragraph 15 of the examination in chief petitioner stated that he made repeated request before the Returning Officer that rejection of his nomination paper for defect of clerical nature would not be a proper rejection as he is ready to correct the defect but the Returning Officer did no listen to him and proceeded with the scrutiny of nomination paper of other candidates. It is further stated in the same paragraph that petitioner repeatedly requested the Returning Officer to allow him to correct the defect so that his nomination paper may not be rejected for a clerical defect. Returning Officer did not consider the request of the election petitioner and

continued with the scrutiny of nomination paper of other candidates and advised the petitioner to try his luck in the next election. In paragraph-16 of the examination in chief petitioner has stated that he was requesting rather begging before the Returning Officer in presence of the observer and the Assistant Returning Officer to permit him to correct the serial, part number of his 10th proposer. It is further stated in the said paragraph that Assistant Returning Officer as also the observer deputed by the Election Commission of India also requested the Returning Officer to allow the election petitioner to make correction in his nomination paper but the Returning Officer did not accept their advice and said that he has already rejected the nomination paper. In paragraphs-17, 18, 19, 20, 21, 23 of his examination in chief petitioner has given the details of the representation dated 11, 12, 13.04.2009 whereunder he informed the Returning Officer and other superior officers including the Election Commission of India about the partisan attitude of the Returning Officer, which have been marked as Exhibits-3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13 in these proceedings. In paragraph-24 of his examination in chief the election petitioner has submitted 'that in compliance of the instructions of the Election Commission of India proceedings taken at the time of presentation and scrutiny of the nomination paper was videographed the interaction which took place between the election petitioner and the Returning Officer, the Returning Officer and the Assistant Returning Officer and the Returning Officer and the observers at the time of scrutiny of nomination paper are part of the video cassette, which has been transmitted to this Court by the Returning Officer in compact disc, which is marked as Exhibit-18.

6. In paragraphs-16 and 17 of his cross-examination election petitioner, P.W.-1 has stated that at the time of presentation of his nomination paper the Assistant Returning Officer and the Assistants present to assist Assistant Returning Officer also overlooked the mistake in serial, part number of his 10th proposer and the Assistant Returning Officer never pointed out any mistake in his nomination paper. He further stated that suggestion that petitioner ignored the information given by the Assistant Returning Officer about the mistake in his nomination paper is not correct. In paragraph-17 petitioner has also refuted the suggestion that he was not a serious candidate. In paragraph 26 of his cross-examination the election petitioner has stated that within one minute the scrutiny of his nomination paper was over and the Returning Officer informed him that part number of his 10th proposer is incorrect and having said so he also told election petitioner that his nomination paper is rejected. In the same paragraph election petitioner volunteered that having heard the order of Returning Officer rejecting his nomination paper he submitted before the Returning Officer that the ground on which his nomination paper is rejected being technical in nature he be allowed time to rectify or remove the defect.

In paragraph-27 petitioner stated that he made verbal request before the Returning Officer to permit him to remove the technical defect. In the same paragraph petitioner volunteered that the request made by the petitioner to the Returning Officer to permit the petitioner to remove the technical defect in the nomination paper has also been videographed as per the instructions of the Election Commission of India contained in letter dated 10.02.2009. In paragraph 28 of the cross-examination the election petitioner denied the suggestion that he never requested the Returning Officer to permit him to correct the technical mistake in his nomination paper and left the place of scrutiny without making such request. In paragraphs-30, 32 of his cross-examination election petitioner states that he informed the Returning Officer that his 10th proposer is either in part no.17, 18 or 19 of the voter list of 165-Munger(General) Assembly Constituency. In paragraph-33 election petitioner has denied the suggestion that he had not made request to the Returning Officer to furnish the copy of the voter list of part nos.17, 18, 19 of 165-Munger(General) Assembly Constituency. In paragraph-35 election petitioner states that during the scrutiny itself he submitted his representation but as no receipt was granted either by the Returning Officer or his Assistants he submitted representation through fax after scrutiny process was over. In paragraph-36 he has denied the suggestion that he asked for only half an hour time from the Returning Officer to remove the defect in his nomination paper. In the same paragraph election petitioner has volunteered that he asked for time until next day to remove the defect but the Returning Officer granted him initially 15 minutes to remove the defect and on further request the time granted was extended by half an hour but before expiry of the time granted within 20-25 minutes, itself petitioner came back with the correct part number of his 10th proposer but the Returning Officer did not accept the same. In paragraph-38 of the cross-examination election petitioner stated that from the certified copy of Annexure-3 obtained from the office of the Returning Officer also it appears that the same was received on 11.4.2009 at 6.21 P.M. In paragraph-39 of the cross-examination election petitioner stated that the suggestion that he submitted application dated 11.4.2009 after rejection of his nomination paper is not correct. In the same paragraph witness volunteered that he submitted application dated 11.4.2009 before rejection of his nomination paper but receipt thereof was not given to the witness and in order to establish its dispatch he sent Annexure-3 through fax. In paragraph-41 of his cross-examination election petitioner stated that he standby his statement made in paragraph-14 of his examination in chief. In paragraph-60 of the cross-examination election petitioner has denied the suggestion that he deliberately committed mistake in his nomination paper as regards part number of his 10th proposer for the purposes of election petition. In paragraph-100 of his cross-examination election petitioner states that it is true that in

the order rejecting the nomination paper the Returning Officer has written that he granted the election petitioner half an hour time to remove the defects but he could not remove the defect within the time granted and he rejected nomination paper but such fact is not correct. In paragraph 101 of the cross-examination the witness states that at page 26 and 27 of the order sheet maintained by the Returning Officer in connection with Munger Parliamentary Election, 2009, Exhibit-6 the Returning Officer has indicated the reasons in brief which weighed with him to reject his nomination paper. In the same paragraph witness volunteers that the reasons are not correct. In paragraph-102 of the cross-examination witness stated that Exhibit-7 is his petition dated 11.04.2009 but in the said petition he has not indicated any time. In paragraph-103 of the cross-examination election petitioner accepts that Exhibit-8 is fax receipt in which the time indicated is 7.09 P.M. In paragraph-104 of the cross examination witness states that Exhibit-7 is his application dated 11.04.2009 which was transmitted through fax to the Returning Officer at 6.20 P.M. and such fact is evident from Exhibit-7, which has come from the office of the Returning Officer and bears his seal. In paragraph-105 election petitioner has denied the suggestion that he transmitted his application on 11.4.2009 Exhibit-7 after the scrutiny proceedings were over. In the same paragraph the witness volunteers that the Returning Officer did not accept his application submitted by hand, whereafter he transmitted the application through fax at 6.20 P.M. In paragraph-106 of the cross-examination election petitioner admits that he does not have any documentary evidence to suggest that he submitted his application dated 11.4.2009 to the Returning Officer while the scrutiny proceeding was on. In paragraph-82 of the cross-examination election petitioner -states that the application dated 11.4.2009 which has been shown to him is not the application which he had filed before the Returning Officer at the time of rejection of his nomination paper, rather it is the application which was sent by him through fax. In paragraph-83 election petitioner states that before sending the application dated 11.4.2009 through fax he had presented the same application before the Returning Officer but he did not accept the same.

7. P.W.-2 Ram Badan Rai who also contested the impugned election as official candidate of Rastriya Janta Dal political party has been examined in these proceedings as P.W.-2. P.W.-2 has stated in paragraph-2 that he was himself present at the place of scrutiny of nomination paper(s) since he had some information that the Returning Officer may reject his nomination paper to ensure/confirm the victory of the sole respondent. P.W.-2 further stated in paragraph-5 of his examination in chief that, although scrutiny of his nomination paper was over but he was present at the place of scrutiny at the time of scrutiny of nomination paper of election petitioner, which was taken up at 3 P.M. He has further stated in the said paragraph

that no sooner scrutiny of nomination paper of the election petitioner was taken up at about 3 P.M. within no time the Returning Officer informed the election petitioner that serial, part number of his 10th proposer is wrong. He further stated in the same paragraph that election petitioner requested the Returning Officer to furnish a copy of voter list of booth nos. 17, 18 and 19 of 165-Munger (General) Assembly Constituency but the Returning Officer gave to the election petitioner the voter list of only two booths, namely 17 and 19. In paragraphs 6, 7 of the examination in chief P.W.-2 stated that election petitioner went through the voter list of booth nos. 17 and 19 but when he did not find the name of his 10th proposer in those two voter list he requested the Returning Officer to supply the copy of voter list of booth no. 18 but the Returning Officer refused to furnish the same. Election petitioner then requested the Returning Officer to adjourn the process of scrutiny for the following day but the Returning Officer initially granted him 15 minutes time to remove the defect in part, serial number of his 10th proposer but on further request from the election petitioner to grant him at least half an hour time the Returning Officer granted the election petitioner half an hour time to remove the defect. After grant of time the election petitioner immediately left the place of scrutiny and within 20-25 minutes was again present at the place of scrutiny and the witness saw the election petitioner requesting the Returning Officer to permit him to correct the part number of his 10th proposer but the Returning Officer did not allow him to correct the part number and verbally stated that he has already rejected his nomination paper. In paragraph-9 P.W.2 states that election petitioner requested the Returning Officer to give him a copy of the rejection order but the Returning Officer stated that he would pass the detailed order after the entire scrutiny process is over. In paragraph-10 P.W.-2 states that the election petitioner drafted a petition at the place of scrutiny itself and presented it before the Returning Officer with request to receive the same but the Returning Officer refused to receive the application though the process of scrutiny was still in progress. In paragraph-11 P.W.-2 states that process of scrutiny concluded at about 7 P.M. on the date on which the nomination paper of the election petitioner was improperly rejected by the Returning Officer.

8. In paragraph-8 of his cross examination P.W.-2 admits that he has also filed election petition in this Court challenging the election of the returned candidate. In paragraph-9 P.W.-2 admits that in the said election petition he has not written that he had any information that his nomination paper is going to be rejected by the Returning Officer. In paragraph-19 of the cross-examination the witness denied the suggestion that he left the place of scrutiny after scrutiny of his nomination paper was over. In paragraphs-28, 30 of his cross-examination P.W.-2 states that scrutiny of nomination paper of election petitioner commenced at 3.05 P.M. and was over at 3.28 P.M. and he was initially granted 15 minutes to remove the defect but

after some persuasion the time was extended by half an hour. In paragraph-31 P.W.-2 stated that election petitioner did not make prayer for time by filing written application. In paragraph-32 P. W.-2 states that after the election petitioner returned back with voter list of part no.18 to remove the defect he was informed by the Returning Officer that his nomination paper has already been rejected, whereafter he submitted written application to the Returning Officer. In paragraph-34 P.W.-2 states that application which the election petitioner filed after rejection of his nomination paper was not accepted by the Returning Officer as he stated that his nomination paper having already been rejected, no useful purpose will be served by filing the said petition and he should take his chance before the Superior authorities.

9. In support of the impugned election three witnesses, namely, Returning Officer, Assistant Returning Officer and the sole respondent have been examined as R.W.-1, 2, 3. Returning Officer, R.W.-1 stated in paragraphs 4, 5 of his examination in chief that during scrutiny of the nomination paper of the election petitioner who had filed his nomination paper as an independent candidate he found that serial, part number of one of his proposer Sri Shailesh Kumar as mentioned in the nomination paper could not be verified from the voter list, whereafter the said defect was pointed out to the election petitioner who asked for half an our time to locate the name of his aforesaid proposer in the voter list. The witness further stated that he furnished the voter list of the relevant part of the Assembly Constituency as asked for by the election petitioner. It is further stated that in spite of providing full opportunity to the election petitioner to locate the name of his 10th proposer in the relevant part of voter list within half an hour asked for by the election petitioner the said defect was not removed within the time asked for, Returning Officer had no alternative but to reject the nomination paper of the election petitioner by passing reasoned order in presence of the petitioner. In paragraph-6 of the examination in chief the Returning Officer stated that during the entire period of scrutiny of the nomination paper of the election petitioner no written petition or complaint was filed before him either by election petitioner or on his behalf. In paragraph-7 of the examination in chief Returning Officer stated that during the scrutiny of the nomination paper of the election petitioner Sri Ram Badan Rai who was also a candidate for the said election was not present as Sri Ram Badan Rai left the place of scrutiny no sooner the scrutiny of his nomination paper was over. In paragraph-13 of the cross-examination R. W.-1 Returning Officer stated that for clerical and technical errors Returning Officer should not reject the nomination paper but for substantial defect in the nomination paper he can always reject the nomination paper. In paragraph-14 of the cross-examination Returning Officer stated that defect in indicating serial, part number of the proposer in the nomination paper is a substantial defect in the nomination

paper. In paragraph-15 of the cross examination Returning Officer stated that he is aware about the provision, which cast a duty upon the Returning Officer to grant adequate opportunity to the candidate to remove the defect in the nomination paper. In paragraph-16 of the cross-examination, Returning Officer stated that he is aware that in appropriate case the scrutiny of a particular nomination paper may be postponed to the next day. In paragraph-17 of the cross-examination Returning Officer stated that any candidate asking for time to remove the defect in the nomination paper until next day may be allowed such adjournment, provided the grounds taken by the candidate is satisfactory. In paragraph-18 witness stated that the maximum time which the Returning Officer can allow for removal of the defect is by the next day but such maximum time is not to be allowed in every case and it depends upon the request made by the candidate as also the nature of defect and considering the two, it is the discretion of the Returning Officer to grant appropriate time for removal of the defect. In paragraph-19 of the cross-examination Returning Officer stated that he is aware of the provision by which the officer receiving the nomination paper has to go through the nomination paper along with the persons assisting him so as to find out the defect in the nomination paper in presence of the candidate and to inform him about the defects with request to remove the same. In paragraph-24 of the cross-examination Returning Officer having perused Sub-Section-(5) of Section 36 of the Act stated that Returning Officer has been given discretion to grant time to the candidate for removing the defect in the nomination paper. In paragraphs-25, 26 of the cross-examination the Returning Officer stated that discretion granted to the Returning Officer under Sub-Section-(5) of Section-36 of the Act for granting time to the candidate to remove the defect is inbuilt as per the language used in the Section. In paragraph-27 of the cross-examination Returning Officer stated that nature of defect would determine the time which is to be granted to remove the defect as per the prayer made by the candidate. In case, the defect is such which cannot be removed on the day of scrutiny then in such cases the candidate is allowed time until next day of the date fixed for scrutiny. In other cases, the candidate is to remove the defect on the same day. In paragraph-30 of the cross-examination Returning Officer denied the suggestion that he made false statement in paragraph-20 and 23 of his cross examination yesterday and again reiterated that Assistant Returning Officer who received the nomination paper of the election petitioner did his job as per law. In paragraph-32 of the cross-examination Returning Officer stated that Assistant Returning Officer informed him that he had pointed out the defect in the nomination paper of the election petitioner to the election petitioner. In paragraph-33 of the cross-examination Returning Officer, however, stated that he did not remember whether he recorded in his order sheet that the Assistant Returning Officer had informed him that he

had pointed out to the election petitioner at the time of receiving his nomination paper the defects in his nomination paper. In paragraph-34 of the cross examination Returning Officer stated that from the order sheet maintained by him pertaining to the impugned election it does not appear that any verbal communication was received from the Assistant Returning Officer about the defects in the nomination paper of the election petitioner. In paragraph-36 of the cross-examination the Returning Officer stated that there is no written instruction as to how defect in the electoral roll number and part number of the proposer is to be communicated to the candidate or his proposer. In paragraph-37 the Returning Officer stated that there is no instruction to provide verbal information about the mistake in the electoral roll number and part number of the proposer in the nomination paper. In paragraph-40 of the cross-examination the Returning Officer stated that according to the Hand Book of the Election Commission of India issued for the Returning Officer, it is undesirable to reject the nomination paper of the candidate on account of defects which could be corrected by the candidate and for removal of such defect assistance of candidate is required. The Returning Officer, Assistant Returning Officer cannot correct the defect themselves on behalf of the candidate in the nomination paper. In paragraph-41 of the cross-examination the Returning Officer stated that at the time of presentation of the nomination paper and thereafter defect in the nomination paper of the election petitioner was not removed as election petitioner did not take steps to remove the defect in the nomination paper. In paragraph 42 of the cross-examination Returning Officer stated that no letter was received by him from the Assistant Returning Officer pointing out the defects as also stating that in spite of information given to the candidate about the defects the same has not been removed by him. In paragraph-49 of his cross-examination the Returning Officer stated that the process of scrutiny had begun at 11 A.M. and continued till 4.30 P.M. In paragraph 51 of the cross-examination the Returning Officer admitted the presence of the election petitioner at the time scrutiny of his nomination paper was taken up. In paragraph-54 of his cross-examination Returning Officer stated that he did not issue any memo to the election petitioner about the defects in his nomination paper. In paragraph-55 Returning Officer stated that election petitioner was present during scrutiny of his nomination paper and having scrutinized the nomination paper he verbally informed the election petitioner about the defect in the nomination paper. In paragraph-56 Returning Officer stated that there is no endorsement of the Assistant Returning Officer on the nomination paper of the election petitioner that the same is defective or the election petitioner was verbally informed about defects in the nomination paper by the Assistant Returning Officer who received the nomination paper. In paragraph-57 Returning Officer stated that the election petitioner having

learnt about the defect did not ask for adjournment. In paragraph-58 of the cross-examination Returning Officer stated that having noticed the defect in the nomination paper of the election petitioner he granted the election petitioner half an hour to remove the defect as was demanded by him. In paragraph-59 the Returning Officer stated that election petitioner never made any request in writing during the scrutiny for grant of further time to remove the defect in the nomination paper. In paragraph-60 of the cross-examination Returning Officer stated that election petitioner verbally asked for half an hour to remove the defect found in his nomination paper, which was granted as per his verbal request. In paragraph-61 of the cross-examination Returning Officer stated that from the order sheet maintained by him at the time of scrutiny of nomination paper of impugned election it would appear that he granted half an hour to the election petitioner as per his request to remove the defect and such fact is mentioned in the order sheet at page 27. In the said paragraph the witness has further clarified that the time was granted to the election petitioner as per his verbal request. In paragraphs 62, 63, 64 of the cross-examination Returning Officer stated that election petitioner asked him to furnish the copy of the voter list of 165-Munger(General) Assembly Constituency and he made available the copy of those parts of voter list which was asked for by the election petitioner. In paragraph-66 of the cross-examination Returning Officer stated that specific part of the voter list which the election petitioner asked for to enable him to remove the defect in the nomination paper is not mentioned in the order sheet. In paragraph-67 of the cross-examination Returning Officer denied the suggestion that he made false statement that election petitioner asked for particular part numbers of the voter list of 165-Munger(General) Assembly Constituency, which was not given to him and that is why he has not mentioned the part number of the voter list which were given to the election petitioner at his request. In paragraph-68 of the cross-examination the Returning Officer stated that part number of the voter list which was furnished to the election petitioner in response to his demand is not indicated in the order sheet. In paragraph-70 of the cross-examination the Returning Officer stated that in the order rejecting the nomination paper of the election petitioner part number of the voter list supplied to him is not indicated. In paragraphs-72, 73, 74 Returning Officer stated that during 2009 Parliamentary Election the Election Commission of India instructed all the Returning Officers to videograph the important events of the election process, namely, receipt of nomination paper, scrutiny, allegation with regard to violation of model code of conduct etc. In paragraph-75 the Returning Officer stated that when he was told about the defect in the nomination paper of the election petitioner by the Assistant Returning Officer who received his nomination paper he did not look into the video cassette to confirm the information furnished by the Assistant Returning Officer. In paragraphs-80, 81,

82, 83, 84 of the cross-examination Returning Officer has stated that he received the application dated 11.4.2009 of the election petitioner through fax late in the evening and it is incorrect to say that when he received the fax message dated 11-4-2009 process of scrutiny was still in progress. In paragraph-86 Returning Officer stated that there are five compact disc of video prepared during submission of nomination paper by different candidates over which the word nomination has been written, which is marked as Exhibit-18. In paragraph-87 Returning Officer stated that there are two compact disc of video prepared during scrutiny proceeding over which part nos. 1 and 2 has been written, which is marked as Annexure-18A. In paragraph-88 Returning Officer stated that it is incorrect to suggest that Assistant Returning Officer did not verbally inform the election petitioner about the defect in his nomination paper. In paragraph-89 of the cross-examination Returning Officer stated that it is incorrect to suggest that he did not give the election petitioner voter list of 165-Munger (General) Assembly Constituency, which was asked for at the time of scrutiny of his nomination paper and as he did not give the voter list to the election petitioner he has not recorded the part number in his order sheet which was given to the election petitioner for removal of defect.

10. R.W.-2 is the Assistant Returning Officer who was authorized by the Returning Officer to discharge the duties of the Assistant Returning Officer as per law as also to receive the nomination paper of the candidate for the impugned election. In paragraph-6 of the examination in chief Assistant Returning Officer stated that the election petitioner presented his nomination paper on the last date fixed for filing the nomination paper for the impugned election. In paragraph-7 of the examination in chief Assistant Returning Officer stated that part, serial number of one of the proposers of the election petitioner did not tally with the entries in the electoral roll as mentioned by him in his nomination paper which mistake was pointed out to the election petitioner by the Assistant Returning Officer but election petitioner did not take any step to correct the mistake. In paragraph-8 of the examination in chief Assistant Returning Officer stated that he informed the Returning Officer about the defect in the nomination paper of the election petitioner as also his lack of interest in correcting the same. In paragraphs-9, 10, 11 of the examination in chief Assistant Returning Officer stated that he was also present during the process of scrutiny and the defect in the nomination paper of the election petitioner was pointed out to him by the Returning Officer and that he asked for half an hour time for removing the defect which was granted by the Returning Officer. In paragraph-12 of the examination in chief the Assistant Returning Officer stated that election petitioner was also provided with voter lists which were asked by him during scrutiny of his nomination paper. In paragraph-13 Assistant Returning Officer stated that after lapse of half

an hour asked for by the election petitioner and his inability to remove the defect in his nomination paper the Returning Officer had no option but to reject his nomination paper. In paragraph 14 of the examination in Chief Assistant Returning Officer stated that Sri Ram Badan Rai was not present at the time of scrutiny of nomination paper of the election petitioner. In paragraph-7 of his cross-examination Assistant Returning Officer denied the suggestion that he did not receive the nomination paper of the election petitioner, sole respondent and others. In paragraphs-14, 15 of the cross examination Assistant Returning Officer stated that as per his memory he received nomination paper of election petitioner on 9-4-2009 the last date for filing the nomination paper just 15-20 minutes earlier to the closing time, which is also indicated over the nomination paper. In paragraphs-17, 19 of his cross-examination Assistant Returning Officer stated that there was no instruction of the Election Commission of India to point out the defects in the nomination paper filed by the candidate either verbally or in writing. In paragraph-20 of the cross examination Assistant Returning Officer stated that there is no instruction to inform the election candidate about the defect in the nomination paper but by way of providing opportunity information about the defect was given to the petitioner. In paragraph-22 Assistant Returning Officer having seen Annexure-2 to the election petition, the form stated that as the defect in the nomination paper of the election petitioner was not covered by any of the columns of the form information about the defect was verbally given to the election petitioner. In paragraph-25 of the cross examination Assistant Returning Officer stated that the proceeding undertaken at the time of receipt of the nomination paper of the election petitioner and other candidates was videographed in audio video mode. In paragraph-26 of the cross examination Assistant Returning Officer stated that the defect in the nomination paper of the election petitioner was conveyed to the election petitioner verbally. In paragraph-27 of his cross-examination Assistant Returning Officer stated that he did not put any remarks on the nomination paper of the election petitioner that the same is defective but he indicated the date and time on which the same was received by him. In paragraph-28 of the cross examination he denied the suggestion that he had not verbally informed the election petitioner about the defect in his nomination paper. In paragraph-29 of the cross examination Assistant Returning Officer stated that he did not see video cassette at the time of receipt of the nomination paper of the petitioner, as such, he is not aware whether conversation between him and the election petitioner about the defects in his nomination paper was videographed. In paragraph-30 of the cross-examination Assistant Returning Officer stated that proceeding undertaken at the time of receipt of the nomination paper, its scrutiny was videographed under the instructions of the Election Commission of India, but

he is not aware about the contents of the cassette. In paragraph 31 of the cross examination Assistant Returning Officer stated that it is incorrect to suggest that he had not informed the election petitioner about the defect in his nomination paper.

11. R.W.-3 is the sole respondent who has not dwelt about the presentation and scrutiny of the nomination paper of the election petitioner, as such, his evidence is not being considered.

12. Learned counsel for the petitioner with reference to the pleadings made in the election petition and the evidence led on behalf of the parties as also the provisions of Section 33 of the Act submitted that election petitioner being an independent candidate filed his nomination paper for contesting the impugned election proposed by 10 electors of the Constituency in two sets, which was received by the Assistant Returning Officer on 9-4-2009 at 2.48 P.M., who handed over the nomination paper to the Assistants present to assist him for the purposes of verification of serial, part number of the proposers as mentioned in the nomination paper and the electoral roll. The Assistants verified the serial, part number as mentioned in the nomination paper with the electoral roll and no defect was pointed out to the petitioner at the time of presentation of his nomination paper that serial part number of any of his 10 proposers did not match with the entries made in the concerned electoral roll. At the time of presentation of the nomination paper by the petitioner no defect in both the sets of the nomination paper was pointed out to the petitioner. On the contrary, petitioner was served with check list under the signature of the Assistant Returning Officer without any instruction to remove the defect in his nomination paper. With reference to sub-section (4) of Section 33 of the Act it is submitted that on the presentation of the nomination paper it was the duty of the Returning Officer to satisfy himself that the names and electoral roll number of the candidate and his proposers as entered in the nomination paper are the same as those entered in the electoral roll and any inaccurate description, clerical, technical or printing error in regard to the name of the candidate or his proposers as entered in the nomination paper or in the electoral roll be overlooked and no nomination paper should be rejected at the time of scrutiny because of the discrepancy of serial, part number as mentioned in the nomination paper and the electoral roll of the candidate and his proposers. It is further submitted that as no defect was pointed out by the Assistant Returning Officer at the time of receipt of the nomination paper petitioner was under the impression that there is no defect in his nomination paper. It is further submitted that petitioner being a serious candidate personally went to attend the process of scrutiny which was scheduled for 11-4-2009 and as his nomination papers were numbered as 56, 57 scrutiny of his nomination paper was taken up by the Returning Officer at about 3 P.M.

After going through the nomination paper of the petitioner Returning Officer informed him that serial number and part number of his 10th proposer Sri Shailesh Kumar is not found in the voter list of the concerned part. Such information surprised the petitioner who informed the Returning Officer that aforesaid defect was never pointed out to him by the Assistant Returning Officer as also the Assistants present at the time of presentation/receipt of his nomination paper. Petitioner thereafter asked the Returning Officer to furnish the voter list of part nos. 17, 18, 19 of 165-Munger (General) Assembly Constituency so as to enable him to locate the correct serial, part number of his 10th proposer and to remove the defect in his nomination paper. The Returning Officer furnished the voter list of part nos. 17, 19 but did not furnish the voter list of part no. 18 of 165-Munger (General) Assembly Constituency. It is submitted on behalf of the petitioner that having gone through the voter list of part nos. 17, 19 petitioner could not locate the name of his 10th proposer and again requested the Returning Officer to furnish the voter list of part no. 18, which was not given despite repeated request of the petitioner to make available the voter list of part no. 18. Petitioner thereafter requested the Returning Officer to adjourn scrutiny of his nomination paper till the next day so as to enable him to remove the defect but the prayer of the petitioner to adjourn the scrutiny proceeding until next day was also rejected by the Returning Officer granting the petitioner 15 minutes to remove the defect, whereafter petitioner rushed to the District Election Office which is also situate in the collectorate where the process of scrutiny was in progress and obtained voter list of part no. 18 of 165-Munger (General) Assembly Constituency. In the District Election Office without any delay petitioner found out the name of his 10th proposer mentioned at serial no. 1175 of part no. 18 of the voter list of 165-Munger (General) Assembly Constituency. Having found the serial number of his 10th proposer petitioner rushed back to the office of the Returning Officer for removal of the defect when the scrutiny process was still on and the Returning Officer was proceeding with the scrutiny of nomination paper of other candidate. Petitioner having obtained part, serial number of his 10th proposer requested the Returning Officer to permit him to remove the defect in the nomination paper. The Returning Officer did not permit the petitioner to remove the defect as the time granted for removal of the defect had already expired and his nomination paper was rejected no sooner the time granted for removal of defect was over. In this connection, it was further pointed out that when the petitioner came back from the District Election Office with the correct serial, part number of his 10th proposer the process of scrutiny was not over and the Returning Officer was engaged in the scrutiny of nomination paper of other candidate. No sooner the scrutiny of the ongoing candidate's nomination paper was over the petitioner requested the Returning Officer to allow

him to remove the defect in his nomination paper but he was informed by the Returning Officer that his nomination paper has already been rejected.

13. Learned counsel for the petitioner with reference to Exhibits-4, 4A and 4B the voter list of booth nos. 17, 18 and 19 of 165-Munger (General) Assembly Constituency submitted that from perusal of voter list of booth no. 18 it would appear that name of 10th proposer of the petitioner is at the same serial number which was mentioned in the nomination paper, which would corroborate the statement of the petitioner that the voter list of part no. 18 was not made available to him by the Returning Officer and had it been made available petitioner would have removed the defect in his nomination paper. It is further submitted that petitioner made attempt to file written representation before the Returning Officer highlighting the manner in which he was not granted opportunity to remove the defect but the Returning Officer refused to entertain and acknowledge the same forcing the petitioner to send the representation to the Returning Officer through fax on 11-4-2009, which has been marked as Exhibit-7. It is also submitted that as the Returning Officer failed to take any action in response to the request made by the petitioner in representation dated 11-4-2009, Exhibit-7 petitioner filed further representations to the Returning Officer on 12-4-2009, Exhibit-9 through fax vide receipt Exhibit-10, 10A, copy whereof was also sent to the Election Commission of India, Exhibits-11, 11A. Reliance has also been placed on Exhibit-12 the attendance register maintained by the Returning Officer at the time of scrutiny and Exhibit 13 application of the petitioner dated 16-4-2009 addressed to the Chief Electoral Officer, Bihar complaining about non-supply of the certified copy of the required documents. Learned counsel for the petitioner has also brought on record the instructions issued by the Election Commission of India regarding videography of the process of scrutiny and filing of nomination paper and submitted that at the instance of the election petitioner the compact disc of the process of presentation and scrutiny of the nomination paper was produced before this Court which was displayed on the computer in presence of the counsel for the parties. With reference to the evidence of R.W.-2 it is submitted that R.W.-2 had stated that defect regarding the incorrect serial, part number of the 10th proposer of the election petitioner was verbally informed to the petitioner. In this regard, it is submitted that it is a fact that Assistant Returning Officer had received the nomination paper of the petitioner in absence of the Returning Officer. Video cassette containing video pictures concerning presentation process of the nomination papers was displayed but it did not reflect that the defect regarding incorrect serial, part number of the 10th proposer of the petitioner was ever conveyed to the petitioner even verbally. With reference to the contents

of the video cassette concerning presentation of the nomination paper does not support the defence put forth by the Assistant Returning Officer that he had informed the election petitioner verbally about the defect in his nomination paper.

14. Learned counsel for the petitioner with reference to the evidence of Returning Officer R.W.-I submitted that R.W.-I admitted in his cross examination vide paragraph-34 that defect in serial, part number of the 10th proposer of the petitioner was verbally communicated by the Assistant Returning Officer to the petitioner but such fact is not mentioned by him in his order sheet that verbal communication was made to him by the Assistant Returning Officer that defect in the nomination paper of the election petitioner has been conveyed to him.

15. Learned counsel for the petitioner further submitted that from the entire evidence of the two official witnesses i.e. Returning, Assistant Returning Officer, it is evidently clear that there does not exist any document to show that the defects regarding incorrect serial, part number of the 10th proposer of the petitioner was detected at the time of presentation/receipt of the nomination paper and that the petitioner was informed about such defect, which is quite evident from the video cassette of the presentation proceedings.

16. Learned counsel for the petitioner also submitted with reference to paragraphs-63, 66 of the cross-examination of the Returning Officer that during scrutiny when Returning Officer noticed the defect about part, serial number of the 10th proposer of the petitioner he asked the petitioner to remove the defect granting him sufficient time as also made available voter list which was asked for by the petitioner but when Returning Officer was confronted with the order sheet maintained by him during the conduction of the scrutiny process he had to concede/admit that he has not mentioned the specific part number of the voter list in his order sheet which was given to the petitioner.

17. Learned counsel for the petitioner with reference to paragraphs-25, 26, 61 of the cross examination of the Returning Officer submitted that Returning Officer admitted in the aforesaid paragraphs that considering the nature of defect in the nomination paper of the election petitioner he granted him half an hour as per his discretion which was inbuilt in the language used in sub-section-(5) of Section 36 of the Act for removal of defect in the nomination paper.

18. Learned counsel for the petitioner with reference to paragraph-27 of the cross-examination of the Returning Officer submitted that in the said paragraph he admitted that in case the defect is such which cannot be removed on the day of scrutiny, candidate is allowed time until next day of the date fixed for scrutiny for removal of defect.

19. Learned counsel for the petitioner further submitted that in paragraph-49 of the cross examination Returning Officer stated that process of scrutiny began at 11 A.M. and it continued till 4.30 P.M. and in paragraph-51 he admitted about the presence of the election petitioner when his nomination paper was taken up for scrutiny. In paragraph-56 he admitted that there is no endorsement of the Assistant Returning Officer on the nomination paper of the election petitioner that the same is defective or the election petitioner was verbally informed about the defect in the nomination paper by the Assistant Returning Officer who received his nomination paper.

20. Learned counsel for the petitioner with reference to the different paragraphs of the cross examination of the Returning Officer referred to in paragraphs 14 to 19 of the written submission submitted that (A) There exist no document to indicate that while receiving the nomination paper of the election petitioner Assistant Returning Officer noticed the defect in serial, part number of the 10th proposer of the election petitioner and informed him about the same even verbally. (B) That video cassette of the presentation process does not support the statement of the official witnesses. (C) That at the time of scrutiny also neither sufficient time was granted to the petitioner nor the voter list of the desired booth numbers were made available to the petitioner as specifically stated in paragraph no.15 of the election petition. (D) That there is no denial of the specific statement made in paragraphs-15 and 16 of the election petition and there is no documentary evidence to support that petitioner was given the voter list of booth nos. 17, 18 and 19. (E) That the video cassette of the scrutiny process also does not support the version of the Returning Officer as deposed by him in Court.

21. That with reference to the statement made by the Returning Officer in paragraphs-72, 73 of his cross examination it is submitted that in compliance of the direction of the Election Commission of India important events of the election process, namely, presentation of nomination and scrutiny were videographed and with reference to the video cassette it is submitted that the very crucial evidence which is in the form of the video cassette should have clinched the issue raised by the petitioner but is missing from the video cassette and hence transparency which was directed to be maintained was completely lost in conducting the impugned election. In this connection, it is also submitted that the starting time of the second disc is 2 P.M. recording programme until 5 P.M., but when it was displayed it could run for one hour and it does not reflect the procedure of scrutiny of nomination paper of the petitioner and in appreciation of such fact it is submitted that this Court should presume that events regarding the scrutiny of nomination paper of the petitioner was deliberately omitted from the disc before it was transmitted to this Court.

22. Learned counsel for the petitioner submitted that object of sub-section-(4) of Section 33 of the Act and its proviso is very clear that no sooner a nomination paper is presented before the Returning/Assistant Returning Officer, the Officer receiving the nomination paper is required to look into the nomination paper to satisfy himself that in the nomination paper name and electoral roll numbers of the candidate, proposers as entered in the nomination paper are the same as those entered in the electoral roll and the nomination paper is free from inaccurate description or clerical, technical or printing error. The word inaccurate description used in the proviso, therefore, would take within its sweep any inaccurate description or error in the nomination paper which should either be rectified at the time of presentation of the nomination paper or overlooked at the time of scrutiny. Learned counsel for the petitioner further submitted that the intention of the Legislature is that if a nomination paper passed the test of scrutiny at the time of its presentation the same cannot be rejected at the time of scrutiny.

23. Learned counsel for the petitioner next submitted that Section 36 of the Act provides for scrutiny of nomination paper by the Returning Officer on the date fixed and proviso to Sub-section-(5) of Section 36 provides that in case, objection is raised by the Returning Officer or is made by any other person the candidate concerned may be allowed time to rebut the objection not later than the next day but one following the date fixed for scrutiny and the Returning Officer shall record his decision on the date to which the proceedings have been adjourned. Learned counsel for the petitioner further clarified that conjoint reading of Sub-sections-(4), (5) of Section 36 with Sub-section-(4) of Section 33 and its proviso provide that Returning Officer should not reject any nomination paper for a defect which can be removed or cured within the time granted to cure the defect under proviso to Sub-section-(5) of Section 36 of the Act. According to the learned counsel Sub-section-(4) of Section 36 require the Returning Officer not to reject a nomination paper for a defect which is not of a substantial character. In the light of the aforesaid provisions, it is submitted that case of the petitioner as pleaded in the election petition and duly substantiated in evidence is that at the time of presentation of the nomination paper by the petitioner no defect in the nomination paper was pointed out by the Assistant Returning Officer who received the nomination paper. The Returning Officer, however, pointed out the defect at the time of scrutiny, whereafter petitioner requested the Returning Officer for supply of voter list of part nos. 17, 18, 19 of 165-Munger(General) Assembly Constituency but the Returning Officer gave the petitioner voter list of part nos. 17, 19, although, petitioner repeatedly asked for voter list of part no. 18 which was not given. Petitioner then begged for time until the next date but the Returning

Officer granted 15 minutes, whereafter petitioner rushed to the District election office to find out the correct serial, part number of the 10th proposer. Petitioner having found the correct serial, part number of the 10th proposer came back to the place of scrutiny, the Returning Officer was still engaged in the scrutiny of nomination paper of other candidates. Petitioner informed the Returning Officer that he has been able to locate the correct part number of the 10th proposer but Returning Officer replied that he has already rejected his nomination paper and advised him to try his luck in the next election.

24. Learned counsel for the election petitioner further submitted that Chapter-V of the instructions of the Election Commission of India contained in the hand book for the Returning Officer deals with nomination paper. Paragraph-16.1 of the Handbook required the Returning Officer or the specified Assistant Returning Officer to compare the entries mentioned in the nomination paper with the entries made in the electoral roll relating to serial number, part number of the candidate and his proposers. Paragraph-17.1 of the said Handbook required the Returning Officer to permit correction of inaccurate description of the electoral roll number of the candidate and the proposer(s) at the time of scrutiny. Paragraph no.17.2 of the said Handbook states that it will be undesirable for the Returning Officer to reject the nomination paper at the time of its scrutiny for a defect which could have been cured at the earlier stage of presentation of the nomination paper. In the light of the contents of the handbook, it is submitted that as per the provisions of the Act it was also the intention of the Election Commission of India that clerical defects in the nomination paper should be cured at the time of presentation itself so that no nomination could be rejected for technical defects at the time of scrutiny.

25. Learned counsel further submitted that proviso to Sub-section-(5) of Section 36 of the Act does vest in the Returning Officer power to postpone the process of scrutiny for removal of defect until the next day but one following the date fixed for scrutiny. In this connection, it is further submitted that the intention behind the provisions of the Act and the instructions in the handbook is that no nomination paper should be rejected for a technical defect and in the light of the said provisions the nomination paper of the petitioner was not liable for rejection as petitioner was present at the place of scrutiny and was ready to remove the defects.

26. It is further submitted that petitioner was present at the place of scrutiny until the process was closed and requested the Returning Officer times without number that he be permitted to remove the defect, which was not granted. He then prepared an application at the place of scrutiny itself and made attempt to get it filed before the Returning Officer during the course of scrutiny but the

Returning Officer refused to receive the application (Annexure-3). After the process of scrutiny was over election petitioner came outside the place of scrutiny and sent his representation to the Returning Officer through fax on the date of scrutiny itself, Annexure-5 annexing the relevant part of the Act. Exhibit-8 is the fax receipt by which it was transmitted to the Returning Officer. It is further submitted that even on 12-4-2009 petitioner sent further application dated 12-4-2009, Exhibit-9 to the Returning Officer indicating details of his earlier application dated 11-4-2009 annexing the photostat copy of the voter list of part no.18 of 165-Munger(General) Assembly Constituency wherein name of his 10th proposer was mentioned at serial no. 1175 under fax receipt, Annexure-7/1 of the election petition. It is also submitted that on 13-4-2009 as well petitioner submitted representation, Annexure-10 to the Returning Officer giving reference to his earlier application dated 11, 12-4-2009 but the Returning Officer never considered the request.

27. Learned counsel for the petitioner further submitted that under letter dated 10-2-2009 Election Commission of India issued instructions for observing full transparency in the process of presentation, scrutiny of the nomination paper so as to prevent cases of mischief by directing videograph of the entire process of presentation, scrutiny of nomination paper. It is submitted that in the case in hand the statements made by the Returning Officer in his evidence does not find support from the video cassette, as such, transparency at the level of the Returning Officer in the instant case was completely lost.

28. In the background of the aforesaid submissions, it is submitted that while receiving and during scrutiny of the nomination paper of the petitioner Returning/ Assistant Returning Officer did not discharge their duties in accordance with the provisions of the Act. They did not conduct themselves in the manner in which they are required to conduct themselves while receiving and conducting scrutiny of the nomination paper of the petitioner and Returning Officer rejected the nomination paper of the petitioner improperly in arbitrary manner without providing the petitioner assistance and sufficient time to remove the technical defect found in the nomination paper. In the circumstances, the election of the sole respondent is fit to be set aside under Sub-Section-(1C) to Section 100 of the Act.

29. In support of the plea that defect in serial, part number of one of the proposers in the nomination paper of the election petitioner is not substantial in character and the nomination paper should not have been rejected for such defect learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court in the case of Viveka Nand Giri Vs. Nawal Kishore Sahi, reported in A.I.R. 1984 Supreme Court 856 and submitted that Hon'ble

Supreme Court dismissed the appeal of the returned candidate Sri Viveka Nand Giri whose election was set aside by the High Court holding that nomination paper of Ram Kumar Jha was improperly rejected by the Returning Officer. In this connection, he pointed out from paragraph-6 of the judgment in the case of Viveka Nand Giri(supra) that Ram Kumar Jha had filed four sets of nomination paper numbered as 39 to 42. The proposer in the nomination paper no. 39 was one Nand Lal Sah while the proposer in nomination paper no. 40 was one Ganesh Prasad Gaur. Proposer in the nomination paper nos. 41 and 42 was Ram Kumar Jha's own brother Birendra Kumar Jha. Ram Kumar Jha mentioned his serial, part number as 415 and 13 respectively in the nomination paper no. 39, as 391 and 17 in nomination paper no. 40, as 324 and 14 in nomination paper no. 41 and as 326 and 14 in nomination paper no. 42. The Returning Officer rejected the nomination paper no. 39 on the ground that serial, part number of the candidate was wrong with reference to the electoral roll, Exhibit-4, nomination paper no. 40 on the ground that serial, part number of the candidate was wrong and the age of the candidate was not mentioned, nomination paper no. 41 on the ground that serial number of the candidate was wrong and nomination paper no. 42 on the ground that there was difference in the age of candidate. Ram Kumar Jha declared in his nomination paper no. 42 in reference whereto argument was made before the Hon'ble Supreme Court that he has completed 33 years of age but in the electoral roll, Exhibit-4 his age is mentioned as 37 years. On consideration of the evidence available on record High court found that no nomination paper could be rejected unless the defect is of substantial character and that the difference in the age of the candidate as given in the electoral roll and the nomination paper is not material error and no opportunity was given to Ram Kumar Jha to remove the defect. High Court and the Hon'ble Supreme Court did not approve of the rejection of the nomination paper no. 42 of Ram Kumar Jha observing that difference in age of the candidate as entered in the electoral roll and the nomination paper would fall under the category of inaccurate discrepancy mentioned in proviso to Sub-Section-(4) of Section-33 of the Act and that it was obligatory on the part of Returning Officer to have it corrected or to overlook it having regard to the language of the proviso as Ram Kumar Jha having completed 33 years of age was qualified to contest the election being above the minimum age required for contesting election to the State Legislature.

30. Another case relied upon by the learned counsel for the petitioner is of Ram Awadesh Singh Vs. Sumitra Devi, reported in A.I.R. 1972 Supreme Court 580. Ram Awadesh Singh the appellant before the Hon'ble Supreme Court was a candidate seeking election from Ara Assembly Constituency and was registered as elector from both Ara and Sandesh Assembly Constituency. He filed his

nomination paper as elector of Ara Assembly Constituency without enclosing the certified copy of the electoral roll as he was contesting from same Constituency. His nomination paper was accepted and after the poll he was declared elected by the Returning Officer. Election petition was filed in the High Court by the respondent challenging the election of the appellant on the ground that his nomination paper was improperly accepted by the Returning Officer as on the date of filing of his nomination paper appellant was not elector in Ara Assembly Constituency and the appellant had not enclosed the certified copy of the voter list of Sandesh Assembly Constituency with his nomination paper. Election of the appellant was set aside by the High Court. Hon'ble Supreme Court while reversing the judgment of the High Court in paragraph-4 of the judgment framed the questions which arose for consideration by the Hon'ble Court and observed in paragraph-6 that on the date of filing of the nomination paper by the appellant for Ara Assembly Constituency he learnt that his name is included as elector in the electoral roll of Ara Assembly Constituency and filed nomination paper as elector of Ara Assembly Constituency. Name of the appellant was later deleted as elector from Ara Assembly Constituency by supplementary list. Appellant and the Returning Officer both were not aware about the deletion of the name of the appellant as elector from the electoral roll of Ara Assembly Constituency. After verifying the name of the appellant and his electoral roll number as indicated in the electoral roll of Ara Constituency and also the name of his proposer the Returning Officer received the nomination paper filed by the appellant. At the time of scrutiny no one objected to the nomination of the appellant. The Returning Officer accepted his nomination as valid nomination. The objection to the acceptance of the nomination of the appellant was put forward for the first time in the election petition. Having considered the aforesaid facts of the case in paragraph-24 of the judgment Hon'ble Supreme Court observed that defect in the nomination paper of the appellant was not of substantial character and allowed the appeal upholding the election of the appellant.

31. Learned counsel for the petitioner also relied upon the judgment of this Court in the case of *Abhay Kumar Singh Vs. Balram Singh Yadav @ Balram Singh*, reported in 2009(1) PLJR 806. In the said case election of Balram Singh Yadav was challenged on the ground that nomination paper of election petitioner was improperly rejected by the Returning Officer. Election for Bihar Legislative Council from local authority constituency was notified and candidate was required to file his nomination paper on the basis of voter list published on 1-1-2002. Election petitioner filed his nomination paper enclosing photo copy of voter list of 1995. At the time of presentation of nomination paper he was served with the memo by the Returning officer to file the voter list of 2002. On the date

of scrutiny no body appeared to attend the scrutiny process on behalf of appellant nor he removed the defect as pointed out in the memo served on him at the time of presentation of his nomination paper pointing out the defect. The nomination paper was, accordingly, rejected. This Court relying upon the judgment of the Hon'ble Supreme Court in the case of *Ram Awadesh Singh and Viveka Nand Giri* set aside the election of Balram Singh Yadav holding that there was no cogent or legal reason for rejecting the nomination paper of the election petitioner.

32. Learned counsel for the election petitioner also relied on the judgment of the Hon'ble Single Judge of this Court in the case of *Rameshwar Prasad Yadav Vs. Sri Awadhesh Kumar Singh*, reported in 2007(3) PLJR 427 whereunder election petition of Rameshwar Prasad Yadav was dismissed holding that the Returning Officer had power to review his order by which he had earlier rejected the nomination paper of Sri Binod Kumar Yadav. Election petitioner filed his nomination paper as official candidate of Janta Dal United political party annexing letter of the authorized person of the said political party allotting him symbol of Janta Dal United political party. Subsequently, Sri Binod Kumar Yadav also filed his nomination paper as official candidate of Janta Dal United political party annexing letter of authorized person allotting him party symbol without intimation to the Returning Officer in form 'B' the cancellation of the earlier allotment of symbol to the petitioner. On the date of scrutiny the Returning Officer accepted the nomination paper of the petitioner and rejected the nomination paper of Sri Yadav. Later, Returning Officer issued letter for fresh scrutiny of nomination paper of both petitioner and Sri Yadav and after fresh scrutiny nomination paper of Sri Yadav was accepted rejecting the nomination paper of the election petitioner. Dismissing the election petition "this Court held that there is no illegality in the order by which nomination paper of Sri Yadav was accepted and that of the petitioner rejected. Learned counsel for the election petitioner with reference to the aforesaid judgment of this Court in the case of *Rameshwar Prasad Yadav* (supra) submitted that as this Court has acknowledged the power of the Returning Officer to review the order accepting/rejecting the nomination paper, the Returning Officer in the case of the petitioner should also have reviewed the earlier order of rejection of the nomination paper of the petitioner no sooner petitioner arrived with correct part number of his 10th proposer as the process of scrutiny was still on. The Returning Officer by not accepting the nomination paper of the petitioner even after he discovered the correct part number of his 10th proposer acted in arbitrary manner and the rejection of the nomination paper of the election petitioner has to be declared as improper by this Court.

33. Learned counsel for the petitioner also relied on the judgment in the case of *Mohd. Yunus Khan Vs. State*

of Uttar Pradesh and Others, reported in (2010) 10 Supreme Court Cases 539 and submitted that Hon'ble Supreme Court has held that arbitrariness. In the action of the constitutional, statutory authorities is an anathema to the principles of reasonableness and fairness, which is enshrined in constitutional, statutory provisions. The Rule of law prohibits the exercise of power in an arbitrary manner and/or in a manner that travels beyond the boundaries of reasonableness. The actions of statutory authorities should be guided by the principles of reasonableness and fairness. The authority cannot be permitted to abuse the law or to use it in unfair manner. According to the learned counsel for the petitioner in the present case the Returning Officer has not only abused the law by acting unfairly but his action can never be said to be reasonable and fair and in any view of the matter the rejection of the nomination paper of the petitioner by the Returning Officer cannot be upheld as the defect for which nomination paper of the petitioner was rejected is not a defect of substantial character as categorically held in the judgment of the Hon'ble Supreme Court in the case of Ram Awadhesh Singh and Viveka Nand Giri(supra).

34. Learned counsel for the sole respondent submitted that entire allegations as contained in the election petition are too vague inasmuch as not containing material facts besides being incorrect, false and contrary to law and does not disclose a triable issue, rather the whole election petition is fit to be dismissed summarily. The solitary allegation though wrong and false is the improper rejection of the nomination paper of the election petitioner. The sole respondent has specifically denied the aforesaid allegation in his written statement vide paragraphs-5, 7, 8, 10 to 13, 15, 16, 19 to 22, 25 to 28, 31 to 33, 38 to 41, 45 and 49. The entire examination in chief of the election petitioner is contrary to the document available before the Returning Officer and also contrary to law. The election petitioner in his entire evidence has not stated that during the scrutiny of his nomination paper he filed any written petition before the Returning Officer to adjourn the scrutiny of his nomination paper for the next day. His entire evidence coupled with the order sheet maintained during the scrutiny of the nomination paper of the petitioner indicate that petitioner asked for half an hour time from the Returning Officer which was granted but during the time allowed election petitioner did not turn up before the Returning Officer to clarify the correct serial, part number of his 10th proposer and the Returning Officer had no alternative but to reject the nomination paper of the election petitioner. The election petitioner in his evidence stated regarding filing of petition before the Returning Officer, Chief Electoral Officer, Bihar, Patna and the Election Commission of India but all such petitions were filed after the scrutiny of his nomination paper and for the purpose of election petition. In the light of the aforesaid fact, it is submitted that settled principle of law

is that Returning Officer has no power to review the order rejecting/accepting the nomination paper as he becomes functus officio after he has passed order rejecting nomination paper of the petitioner.

35. Learned counsel for the respondent also submitted that P.W.-2 Sri Ram Badan Rai one of the contesting candidate examined on behalf of the election petitioner was also the candidate for the impugned election and his nomination paper was accepted by the Returning Officer much before the scrutiny of the nomination paper of the election petitioner but P.W.-2 claimed that he was present before the Returning Officer at the time of scrutiny of the nomination paper of the election petitioner. P.W.-2 stated in his examination in chief that election petitioner requested the Returning Officer to grant him half an hour for removal of defect and the Returning Officer granted him half an hour to rectify the mistake in serial, part number of his 10th proposer. It is submitted that the election petitioner did not rectify the mistake in description of serial, part number of his 10th proposer within the time granted by the Returning Officer for removing the defect, as such, the Returning Officer had no option but to reject the nomination paper of the election petitioner.

36. Learned counsel for the sole respondent with reference to paragraph-6 of the examination in chief of the Assistant Returning Officer submitted that election petitioner presented his nomination paper on the last date fixed for presentation of nomination paper. Assistant Returning Officer in paragraph-7 of his examination in chief stated that serial, part number of one of the proposer of the election petitioner as mentioned by him in his nomination paper did not match with the entries made in the electoral roll. Assistant Returning Officer further stated that when he pointed out such mistake to the election petitioner he did not take any interest to correct the mistake. Assistant Returning Officer further stated that he had informed the Returning Officer about the defect noticed by him in the nomination paper of the election petitioner as also his lack of interest in removing the defect. Assistant Returning Officer further stated that on 11-4-2009 he was present during the process of scrutiny of the nomination paper by the Returning Officer and the defect in the nomination paper of the election petitioner was pointed out by the Returning Officer to the election petitioner, whereafter election petitioner asked the Returning Officer to grant half an hour to remove the defect, which was allowed by the Returning Officer to the election petitioner. The Assistant Returning Officer also stated in his examination in chief that election petitioner was provided with voter lists which were asked for by him during scrutiny of his nomination paper. The Assistant Returning Officer further stated that the voter list of all the assembly segments comprising the Parliamentary Constituency was available in the hall where scrutiny of the nomination paper was going on. Assistant Returning Officer specifically

stated in his examination in chief that after passage of half an hour asked for by the election petitioner and his inability to remove the defect found in the nomination paper the Returning Officer had no option but to reject the nomination paper of the election petitioner. The Assistant Returning Officer further stated in his examination in chief that Sri Ram Badan Rai was not present at the time of scrutiny of the nomination paper of the election petitioner.

37. Learned counsel for the sole respondent with reference to paragraph-4 of the examination in chief of Returning Officer submitted that Returning Officer categorically stated that during scrutiny of the nomination paper of the election petitioner who filed his nomination paper as an independent candidate he noticed that serial, part number of one of the proposers of the election petitioner Sri Shailesh Kumar as mentioned in the nomination paper of the election petitioner could not be located in the electoral roll, whereafter Returning Officer pointed out the said substantial defect to the election petitioner who asked for half an hour for removal of defect as also relevant part of the voter list, which was given to the election petitioner. In spite of adequate opportunity granted to the election petitioner to remove the defect he could not locate the name of his 10th proposer in the relevant part of the voter list within the time asked for by the election petitioner and granted by the Returning Officer, as such, for failure of the election petitioner to remove the substantial defect in his nomination paper Returning Officer had no option but to reject his nomination paper.

38. Learned counsel for the sole respondent further submitted that Returning Officer was cross-examined on behalf of election petitioner at great length for three days, i.e. 29-11-2010, 30-11-2010 and 6-12-2010 but he could not be shaken and thereby from the evidence of the Returning Officer it is proved beyond reasonable doubt that the nomination paper of the election petitioner was rejected as he could not remove the defect in his nomination paper regarding his 10th proposer in spite of adequate opportunity granted to him to remove the defect.

39. Learned counsel further submitted that from the evidence of the Returning Officer it is established that all the voter list which were asked for by the election petitioner from the Returning Officer were given to the election petitioner by the Returning Officer but the nomination paper of the election petitioner was rejected for his failure to remove the defect in the nomination paper.

40. Learned counsel for the sole respondent further submitted that order dated 11.4.2009 passed by the Returning Officer rejecting the nomination paper of the election petitioner, is correct as it is the order passed by the Returning Officer in discharge of official duty and there is presumption about the correctness of the official act under Section 114 of the Evidence Act unless proved

to the contrary. In the instant case, according to the learned counsel for the sole respondent election petitioner has miserably failed to prove that the contents of the order dated 11-4-2009 rejecting his nomination paper is incorrect.

41. Learned counsel for the sole respondent with reference to Sub-section-(5) of Section 36 of the Act submitted that as the election petitioner failed to remove the defect in his nomination paper regarding serial, part number of his 10th proposer within the time granted by the Returning Officer, Returning Officer had no option but to reject his nomination paper.

42. Learned counsel for the respondent in this connection, relied on the judgment of the Hon'ble Supreme Court in the case of Brij Mohan Vs. Sat Pal., reported in AIR. 1985 Supreme Court 847 and submitted that Sat Pal an elector of the Jind Assembly Constituency filed election petition that Dog Ram was registered as an elector at serial no. 177 in part 39 of the electoral roll of Jind Constituency. Ram Pratap who proposed Dog Ram as candidate was registered as elector at serial number 313 in part 39 of the same constituency. In the nomination paper name and address of Dog Ram was correctly mentioned but there was mistake in part number as for 39, 57 was mentioned due to inadvertence committed by the person who filled up nomination paper. Similarly in the case of proposer Ram Pratap the serial number of the elector and the number of constituency were given correctly but the number of his house was wrongly entered in the column meant for the part number of the electoral roll. These mistakes in the nomination paper were technical in nature and should have been corrected by the Returning Officer at the time of scrutiny. No other candidate or proposer objected to the acceptance of the nomination paper of Dog Ram but the Returning Officer on his own rejected the nomination paper stating that particulars of the candidate and the proposer have been wrongly entered in the nomination paper and the candidate who was present at the time of scrutiny failed to produce the voter list showing particulars as entered in the nomination paper under consideration. Election of the returned candidate Brij Mohan was challenged by an elector on the ground that defects in the nomination paper of Dog Ram were technical in nature and should have been rectified by the Returning Officer at the time of scrutiny. High Court accepted the aforesaid submission and set aside the election of the returned candidate Brij Mohan on the ground that the nomination paper of Dog Ram was improperly rejected by the Returning Officer. Returned candidate filed appeal in the Hon'ble Supreme Court and the Hon'ble Supreme Court reversed the judgment of the High Court holding that nomination paper of Dog Ram was properly rejected as there was defect in the serial, part numbers of the candidate and the proposer in the nomination paper, their names could not be traced in the concerned parts as registered electors. According to the Hon'ble Supreme Court the

Returning Officer, therefore, was helpless and asked the candidate Dog Ram to point out the names of self and his proposer in the electoral roll, which Dog Ram failed to point out. It is submitted by the learned counsel for the sole respondent that while upholding the rejection of the nomination paper of Dog Ram the Hon'ble Supreme Court distinguished the judgment of the Supreme Court in the case of Ram Awadhesh Singh and Viveka Nand Giri(Supra) in paragraphs-23, 24 of the said judgment heavily relied upon by the election petitioner.

43. Learned counsel for the sole respondent further relied on the judgment of the Hon'ble Supreme Court in the case of Lila Krishan Vs. Maniram Godara and Ors., reported in A.I.R. 1985 Supreme Court 1073 in which same point was involved as the serial number of the voter list of the proposer of the two candidates, namely, Maniram Chapola and Raj Tilak did not tally with the serial number mentioned in the electoral roll. The proposer of Maniram Chapola was one Brij Bhushan while the proposer of one Raj Tilak was one Upendra Kumar. Brij Bhushan and Upendra Kumar as indicated in the electoral roll was at serial no. 26 and 77 respectively. These numbers have been correctly indicated in form 3A but in the nomination paper the serial numbers have been shown as 126 and 177 respectively. The discrepancy has arisen on account of appearance of the figure '1' before the correct number. When scrutiny was taken up Maniram Chapola and Raj Tilak were not present before the Returning Officer. Similarly proposers Brij Bhushan and Upendra Kumar were also absent. The High Court took the view that it was the obligation of the Returning Officer to verify the electoral roll and to find out the serial number, the mistake if any was not of substantial character so as to expose the nomination paper to rejection and the rejection on such a ground was improper and set aside the election of the returned candidate. Hon'ble Supreme Court, however, reversed the judgment holding that to cast obligation on the Returning Officer to look through the entire electoral roll of a particular part with a view to find out the identity of the proposer is not the requirement of law to read such obligation on the part of Returning Officer is likely to lead to an unworkable position. In one part of the electoral roll on the average names of about a thousand voters appeared. Out of thousand names it is quite possible that there would be more than one voter by the same name. Identification of any particular voter out of such list even when there are more voters with the same name is possible only with further reference to the father's name. To cast obligation of verifying the entire electoral roll of a particular part is actually requiring the Returning Officer to do almost an impossible feet. No one was available when the nomination paper of Maniram Chapola and Raj Tilak was taken up for scrutiny to indicate that the serial number of their proposer Brij Bhushan and Upendra Kumar was 26 and 77 and not 126 and 177, as is appearing in the nomination paper and the Hon'ble Supreme Court

considering the import of the provisions of Sub-Section-(4) of Section 33 and Sub-Section-(1) to (4) of Section 36 of the Act reversed the judgment of the High Court and held that the nomination paper of Maniram Chapola and Raj Tilak was rightly rejected as incorrect serial number of their proposer was indicated in the nomination paper, which was not even corrected at the time of the scrutiny as none was available to correct the defect.

44. Learned counsel for the sole respondent also relied on the judgment of the Hon'ble Supreme Court in the case of Bhogendra Jha Vs. Manoj Kumar Jha, reported in A.I.R. 1996 Supreme Court 2009. In the said case serial, part number of one of the proposers of Manoj Kumar Jha was wrongly mentioned in the nomination paper which was not corrected by the candidate or his proposer at the time of scrutiny of nomination paper and the Returning Officer had no option but to reject the nomination paper of Manoj Kumar Jha. Patna High Court set aside the election of the returned candidate Bhogendra Jha at the instance of Manoj Kumar Jha. Hon'ble Supreme Court, however, reversed the judgment of the Patna High Court holding, that nomination paper of Manoj Kumar Jha was properly rejected as it was not the duty of the Returning Officer to make a roving and fishing enquiry to find out the serial, part number of the proposer which was the duty of the candidate/proposer to furnish correct serial, part number in the nomination paper.

45. Learned counsel for the sole respondent distinguished the judgment of this Court rendered in the case of Abhay Kumar Singh(supra) and submitted that nomination paper of Abhay Kumar Singh was rejected by the Returning Officer on the sole ground that he filed the voter list of the year 1995 and not of the year 2001, although he was voter from Raghpur Assembly Constituency, which was part of the local body constituency, as such, he was not required to have filed voter list of the year 2001.

46. Having considered the rival pleadings, evidence led on behalf of the parties and the submissions noted above as also the deposition of the Assistant Returning Officer, RW.-2 who received the nomination paper of the election petitioner on 9-4-2009 at 2.48 P.M., it is evident that there was defect in the nomination paper of the election petitioner as serial, part number of his 10th proposer as mentioned in the nomination paper did not match with the concerned electoral roll and information to that effect was verbally conveyed by the Assistant Returning Officer to the election petitioner but he did not take any steps to remove the defect on the date of presentation of the nomination paper, which has been stated by the Assistant Returning Officer, R.W.-2 in paragraphs-6, 7 of his deposition. True it is that R.W.-2 did not furnish written information about the defect to the election petitioner by serving a memo indicating the defect noticed in the nomination paper. Submission made on behalf of the

election petitioner that by not furnishing written memo indicating the defect noticed in the nomination paper of the election petitioner along with receipts, check slip dated 9-4-2009, Annexures-1, 1/1 and 2 the Assistant Returning Officer, R.W.-2 violated Sub-Section-(4) of Section 33 of the Act is wholly misconceived as Sub-Section-(4) of Section 33 of the Act only require the officer receiving nomination paper to satisfy himself about the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral roll. In the instant case, the Assistant Returning Officer, R.W.-2 having received the nomination paper of the election petitioner passed on the nomination paper to the Assistants present to assist him for verification of the entries made in the nomination paper. Assistants having noticed the defect in the nomination paper of the petitioner brought the defect to the notice of the Assistant Returning Officer, R.W.-2 who in turn verbally informed the petitioner about the defect and thereby Sub-Section-(4) of Section 33 of the Act was complied with by the Assistant Returning Officer, R.W.-2. The receipts, Annexures-1, 1/1 were issued in token of having received the nomination paper of the petitioner with further information that he has to appear for scrutiny of his nomination paper at the time and date indicated in the receipt. Check list, Annexure-2 was issued informing the petitioner that the documents required to be filed along with the nomination paper have been filed with the nomination paper. Receipt/notice fixing the date and time for scrutiny of the nomination paper and the check slip showing receipt of the documents has nothing to do with the defects noticed by the Assistant Returning Officer, R.W.-2 at the time of receipt of the nomination paper, which is required to be communicated to the candidate concerned either verbally or through a written memo. In the instant case, defect having been pointed out to the election petitioner verbally, election petitioner was given required notice for removal of the defect. Information about the defect noticed by the Assistant Returning Officer in the nomination paper of the election petitioner on 9-4-2009 was also conveyed by the Assistant Returning Officer to the Returning Officer on 9-4-2009 who also confirmed that Assistant Returning Officer had informed him about the defect noticed in the nomination paper of the election petitioner. In the circumstances, I do not find any fault with the Assistant Returning Officer, R.W.-2 as he having received the nomination paper and having verified the defects through the Assistants present to assist him in receipt of nomination paper informed the election petitioner verbally about the defect found in his nomination paper that serial, part number of the 10th proposer as mentioned in the nomination paper did not match with the concerned electoral roll.

47. Scrutiny of the nomination paper of the election petitioner was taken up on 11-4-2009 at about 3 P.M. After going through the nomination paper of the election

petitioner Returning Officer, R.W.-1 informed the petitioner that serial, part number of his 10th proposer Sri Shailesh Kumar does not match with the concerned part of the electoral roll, which information, however, surprised the petitioner and he informed the Returning Officer, R.W.-1 that no such information was ever given to him by the Assistant Returning Officer when he presented the nomination paper before him. Aforesaid case of the election petitioner that he learnt about the defect in his nomination paper for the first time on the date of scrutiny i.e. 11-04-2009 at about 3 P.M. through the Returning Officer R.W.-1 does not appear to be trustworthy as from the evidence of the Assistant Returning Officer, R.W.-2 it is quite evident that R.W.-2 not only informed the election petitioner about the defects in his nomination paper on 9-4-2009 the date of presentation of the nomination paper but also gave information about the defect in the nomination paper of the election petitioner to the Returning Officer, R.W.-1 on 9-4-2009 who also confirmed in his deposition that he was duly informed by the Assistant Returning Officer on 9-4-2009 itself that verbal information about the defect in the nomination paper was given to the election petitioner.

48. The further case of the election petitioner that having learnt about the defects in the nomination paper for the first time from the Returning Officer, R.W.-1 on 11-4-2009 at about 3 P.M., he requested the Returning Officer, R.W.-1 to furnish the electoral roll of part nos. 17 to 19 of 165-Munger(General) Assembly Constituency to enable him to find out the correct serial, part number of the 10th proposer and remove the defect in the nomination paper, the Returning Officer, R.W.-1 furnished electoral roll of part nos. 17 and 19 to the election petitioner, despite repeated request of the petitioner, Returning Officer, R.W.-1 did not furnish electoral roll of part no. 18, petitioner thereafter requested the Returning Officer, R.W.-1 to adjourn the scrutiny of his nomination paper for the next day, the Returning Officer, R.W.-1, however, granted the petitioner 15 minutes for removal of defect also does not appear to be trustworthy in view of the contents of paragraphs 16 to 21 of the election petition whereunder election petitioner stated that his request for adjourning the scrutiny of his nomination paper to the following day was not considered, he was granted 15 minutes to remove the defect, having ascertained the correct part number of the 10th proposer election petitioner returned back to remove the defect within half an hour while scrutiny of the nomination paper of others was still on and the contents of paragraphs 9 to 14 of the examination in chief of the election petitioner where election petitioner with intent to improve his case stated that his request to adjourn the scrutiny of his nomination paper to the following day was not considered the Returning Officer made up his mind to reject his nomination paper without providing the petitioner opportunity to remove the defect in the nomination paper, the petitioner had no option but to request the Returning

Officer to grant half an hour for removal of defect but the Returning Officer granted the petitioner 15 minutes to remove the defect in the nomination paper. It would thus appear that as per election petition petitioner requested the Returning Officer, R.W.-1 to adjourn the scrutiny of his nomination paper by following day but the Returning Officer granted him 15 minutes to remove the defect, whereas from his examination in chief it appears that when request of the petitioner for adjourning the scrutiny proceeding to the following day was not considered and Returning Officer made up his mind to reject the nomination paper petitioner asked for half an hour to remove the defect but the Returning Officer granted the petitioner 15 minutes for removal of defect in his nomination paper. There is variance in the case of the election petitioner as stated in the election petition and examination in chief. As per election petition, election petitioner asked for adjournment of the scrutiny to the following day but Returning Officer granted 15 minutes for removal of defect. As per examination in chief election petitioner asked for adjournment of scrutiny to following day but the Returning Officer looked adamant to reject the nomination paper without providing any opportunity to remove the defect then petitioner asked for half an hour for removal of defect in the nomination paper but the Returning Officer granted the election petitioner 15 minutes to remove the defect. A forenoted departure with intent to improve the case of the election petitioner creates further doubt about the further case of the election petitioner that having ascertained the correct part number of the 10th proposer the election petitioner came back within half an hour/20-25 minutes to remove the defect in his nomination paper and lends support to the version of the Returning/ Assistant Returning Officer that election petitioner did not come back to remove the defect in his nomination paper within the time granted for removal of defect in the nomination paper and the nomination paper of the election petitioner was rejected no sooner time granted for removal of defect(half an hour) was over but the reasoned order rejecting the nomination paper was passed in presence of the petitioner. Aforesaid case of the election petitioner as stated in the election petition and examination in chief also does not find mentioned in the contemporaneous document, the application of the petitioner dated 11-04-2009, Annexure-3 addressed to the Returning Officer with copy to the Chief Electoral Officer, Bihar and the Chief Election Commissioner of India, New Delhi, in which petitioner has not stated that he learnt about the defects in his nomination paper for the first time on the date and time of scrutiny i.e. 11-04-2009 at about 3 P.M. through the Returning Officer and that he asked for voter list of part nos. 17 to 19 for removal of defect in his nomination paper from the Returning Officer but the Returning Officer gave the petitioner copy of voter list of part nos. 17 and 19 and not of part no. 18, on failure of the Returning Officer to furnish voter list of part no. 18, election

petitioner sought adjournment of the scrutiny of his nomination to the following day/half an hour but the Returning Officer granted the election petitioner 15 minutes for removal of defect. Aforesaid case has been set out by the election petitioner for the first time in the election petition, paragraphs-16 to 21 and paragraphs 9 to 14 of the examination in chief of the election petitioner and not in the contemporaneous document, Annexure-3, in the circumstances, cannot be relied upon in view of paragraph-36 of the cross-examination of the election petitioner where election petitioner admits that he was granted half an hour for removal of defect in the nomination paper. The fact that election petitioner was granted half an hour for removal of the defect by the Retuning Officer, R.W.-1 is also confirmed by Sri Ram Badan Rai, P.W. 2 another candidate as also by both the official witnesses, namely Returning Officer, R.W.-1 and Assistant Returning Officer, R.W.-2 but the defect was not removed within the time granted, in the circumstances, I am satisfied that petitioner was allowed sufficient indulgence of half an hour by the Returning Officer to correct the serial, part number of his 10th proposer which was not corrected within the time granted and nomination paper of the petitioner was rejected in his presence as has been stated by Returning Officer, R.W.-1 in paragraphs-4 and 5 of his examination in chief.

49. The further case of the election petitioner that having found the correct serial, part number of his 10th proposer he returned to the place of scrutiny within 20-25 minutes and informed the Returning Officer that he has been able to find the correct serial, part number of his 10th proposer, but was not entertained by the Returning Officer, R.W.-1 also does not appear to be trustworthy in view of the fact that election petitioner did not state such fact in the contemporaneous document the application of the petitioner dated 11-04-2009, Annexure-3 and the evidence of the Returning, Assistant Returning Officer, R.W.-1, 2 that petitioner returned back to remove the defect noticed in his nomination paper after half an hour by the time his nomination paper was already rejected by the Returning Officer, R.W.-1 as he did not appear within half an hour, the time granted for removal of defect noticed in his nomination paper and the reasoned order rejecting the nomination paper of the petitioner was passed in his presence. The case of the election petitioner that he submitted application dated 11-4-2009, Annexure-3 soon after rejection of his nomination paper on 11-4-2009 also does not appear to be correct as according to the petitioner as per paragraph 17 of his examination in chief the Returning Officer, R.W. 1 refused to receive the application dated 11-4-2009 when the same was submitted before him soon after rejection of the nomination paper of the petitioner. Petitioner, however, did not send representation dated 11-4-2009 through fax to the Returning Officer immediately after refusal of the Returning Officer to receive the representation in view of the own admission of the

petitioner in paragraph-38 of his cross-examination that copy of representation dated 11-4-2009 was faxed by him to the Returning Officer on 11-4-2009 at 6.21 P.M. before which the scrutiny of the nomination paper of all the candidates was already over at 4.30 P.M. which is also confirmed by the Returning Officer in paragraph-49 of his cross-examination.

50. The submission that defect noticed in the nomination paper of the petitioner should have been ignored in view of proviso to sub-section-(4) of Section 33, sub-section-(4) of Section 36 and proviso to sub-section-(5) of Section 36 of the Act is also misconceived as petitioner having been informed about the defect by the Assistant Returning Officer on 9-4-2009 as also by the Returning Officer on 11-04-2009 and granted sufficient indulgence of half an hour by the Returning Officer to remove the defect failed to remove the defect within the time granted. In the circumstances, Returning Officer had no option but to reject his nomination paper as in the absence of correct part, serial number of the 10th proposer of the election petitioner it was quite difficult for the Returning Officer to identify the 10th proposer of the election petitioner.

51. The submission that video cassette containing video pictures concerning presentation, scrutiny process of the nomination paper(s) did not reflect the defect regarding incorrect serial, part number of the 10th proposer of the petitioner being conveyed to the petitioner and sufficient indulgence being granted to the petitioner to remove the defect may put a question mark over the manner in which video pictures were taken by the videographer but Returning, Assistant Returning Officer cannot be held responsible if the videographer has not taken the video pictures of the entire proceeding in right earnest.

52. Reliance placed by the election petitioner over the judgment of the Hon'ble Supreme Court in the case of Ram Awadhesh Singh and Viveka Nand Giri (supra) appears to be misconceived in view of law laid down in paragraphs-23, 24 by the Hon'ble Supreme Court in the case of Brij Mohan(supra) where the judgments relied upon by the counsel for the petitioner has been distinguished observing that the decisions will not apply to the facts of the present case where there is mistake in mentioning the serial, part number of the candidate and the proposer in the nomination paper as in spite of indulgence granted to the candidate of that case to remove the mistake in his nomination paper the mistake was not removed. In this connection, I may point out that the election of Viveka Nand Giri was set aside as one of the four nomination paper of Ram Kumar Jha bearing no. 42 was found to have been improperly rejected on the ground of difference in age as mentioned in the nomination paper i.e. 33 years and in the electoral roll i.e. 37 years. Ram Kumar Jha having completed 33 years of age was qualified to contest the election being above the minimum age required for contesting the election to the State Legislature. In the

circumstances, Court held that difference in age of the candidate as entered in the nomination paper and mentioned in electoral roll would fall under the category of inaccurate discrepancy mentioned in proviso to sub-section-(4) of Section 33 of the Act and it was obligatory on the part of Returning Officer to have it corrected or to overlook the same. In the case in hand, election petitioner was granted half an hour to correct the description of his 10th proposer in the nomination paper but during the time granted i.e. half an hour petitioner never returned to remove the defect and the Returning Officer rejected his nomination paper after passage of the time granted i.e. half an hour. Petitioner did appear with the correct part number of his 10th proposer after rejection of the nomination paper and requested the Returning Officer to permit him to correct the description of his 10th proposer. The Returning Officer, however did not permit such correction as by the time election petitioner returned to correct the description of his 10th proposer, the Returning Officer had already rejected his nomination paper soon after the time granted for removal of defect i.e. half an hour was over but passed the reasoned order, in presence of the election petitioner. Returning Officer having no power to review the order passed under Section 36 of the Act, I do not find any illegality in refusal of the Returning Officer to review his order rejecting the nomination paper of the election petitioner. In view of my discussion in paragraphs-46 to 52, above, I am satisfied that the nomination paper of the election petitioner for contesting the impugned election was properly rejected for his failure to remove the defect found in his. Nomination paper by the Assistant/ Returning Officer within the time granted by the Returning Officer i.e. half an hour.

53. The election petition is, accordingly, dismissed.

Sd/-

Patna High Court, Patna

(V. N. SINHA)

Dated the 1st May, 2012

[No. 82/BR/(2/2099)/2010]

By Order,

R. K. SRIVASTAVA, Principal Secy.

नई दिल्ली, 7 फरवरी, 2013

आ. अ.10.—लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, निर्वाचन आयोग एतद्वारा निर्वाचन अर्जी सं. 4/2009 में दिये गये उच्च न्यायालय, पटना के तारीख 25 नवम्बर, 2011 के आदेश को प्रकाशित करता है।

(आदेश इस अधिसूचना के अंग्रेजी भाग में छपा है।)

[सं. 82/बिहार-लो.स./(4/2009)/2013]

आदेश से,

आर. के. श्रीवास्तव, प्रधान सचिव

New Delhi, the 7th February, 2013

O. N. 10.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby published Order dated the

25th November, 2011 of the High Court of Judicature at Patna in Election Petition No. 4 of 2009.

**IN THE HIGH COURT OF JUDICATURE AT
PATNA**

Election Petition No. 4 of 2009

(In the matter of an application filed under Sections 80, 80A and 81 of the Representation of the People Act, 1951)

Bishnudev Bhandari

..... Petitioner

Versus

Mangani Lal Mandal

..... Respondent

Appearance:

For the Petitioner : M/s. S. B. K. Manglam, Anita Kumari, Shyam Kishore Verma, Advocates.

For the Respondent : Mr. S.N.P. Sharma, Sr. Adv., Mr. Amrendra Kr. Singh, Advocate.

Present

Hon'ble Mr. Justice V.N. Sinha,

V. N. Sinha, J.—Petitioner is an elector from Babubarhi Assembly Constituency, which is part of 7, Jhanjharpur Parliamentary Constituency. he has filed this election petition under Sections 80, 80A, 81 of the Representation of the People Act, 1951 (hereinafter referred to as the "Act") questioning the validity of the election of the sole respondent from 7, Jhanjharpur Parliamentary Constituency held on 23-04-2009 on the ground that the sole respondent while submitting his nomination paper violated the right to information of the electors of the said constituency, as read into, interpreted, declared by the Hon'ble Supreme Court while considering the different facts of right to freedom of speech and expression enshrined in Article 19 (1)(a) of the Constitution of India in the case of Union of India Vs. Association for Democratic Reforms and Another, reported in (2002) 5 SCC 294 (hereinafter referred to as the case of Association for Democratic Reforms) vide paragraph 48 of the judgment dated 2-5-2002, whereunder Election Commission of India was directed to call for information on affidavit by issuing necessary order in exercise of the power under Article 324 of the Constitution from each candidate seeking election to Parliament/State Legislature as a part of his nomination paper about the antecedent, assets, liabilities of the candidate, spouse and other dependents.

2. It is submitted by the learned counsel for the petitioner that in order to give effect to the pronouncement of the Hon'ble Supreme Court in the case of Association for Democratic Reforms, the Election Commission of India

issued order no. 3/ER/2002/Js-II/Vol.III dated 28-06-2002 authorizing the Returning Officer to reject the nomination paper of the candidate who furnished any wrong, incomplete or suppressed material information about his antecedent, assets, liability of self, spouse and dependents in the affidavit filed along with the nomination paper. The Parliament in order to give effect to the direction of the Hon'ble Supreme Court in the case of Association for Democratic Reforms (supra) inserted Sections 33A, 33B in the Act by Act No. 72 of 2002 with effect from 24-8-2002. Section 33A required the candidate to furnish information under the Act or the Rules made thereunder together with his antecedents. Section 33B of the Act required the candidate to disclose only those informations which are required under the Act and the Rules and no other information directed to be disclosed/furnished under judgment, decree or order of any Court. Validity of Section 33B of the Act was challenged as ultra vires before the Hon'ble Supreme Court in the case of People's Union for Civil Liberties (PUCL) and Another Vs. Union of India and Another. Under judgment dated 13-03-2003, reported in (2003) 4 SCC 399 Section 33B was declared ultra vires, however, with prospective effect i.e. from the date of the judgment after observing in paragraph 73, 123 that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment' of the Supreme Court in the case of Association for Democratic Reforms. The direction of the Election Commission to the Returning Officer to reject the nomination paper after conducting summery enquiry at the time of scrutiny of the nomination paper for furnishing wrong or concealing material information by the candidate in the case of assets and liabilities of the candidate, spouse and dependent was not approved by the Hon'ble Supreme Court and the Election Commission was directed to revise its instructions in the light of the directions issued in the case of Association for Democratic Reforms as also provisions of the Act, as in the case of assets, and liabilities it would be very difficult for the Returning Officer in a summary enquiry to consider the truth or otherwise of the details furnished with reference to the documentary proof of the assets and liabilities of the candidate. Section 33B having been held ultra vires with prospective effect i.e. from the date of judgment 13-03-2003 in the case of People's Union for Civil Liberties (supra) 'candidate contesting election to the Parliament/State Legislature during the period between date of enactment of Section 33B i.e. 24-8-2002 and the date of judgment 13-3-2003 cannot be held liable for not furnishing the assets, liability of self, spouse and dependents in the light of the earlier judgment of the Supreme Court dated 2-5-2002 in the case of Association for Democratic Reforms (supra).

3. It is further submitted on behalf of the election petitioner with reference to the averments made in paragraphs-23-29, 32, 33 of the Election Petition read with affidavit filed by the sole respondent along with his

nomination paper, Exhibit-6 that the respondent while filing nomination paper along with the affidavit deliberately withheld information about the assets and liabilities of his first wife Smt. Sunita Devi in the format filed along with his nomination paper and thereby violated the right to information of the election petitioner as also of the other electors of the Constituency leading to non-compliance of Article 19(1)(a) of the Constitution by the respondent and his election is fit to be set aside under Sections 100(1)(d)(iv) of the Act, which inter alia empower the High Court to declare the election of the returned candidate to be void for non-compliance of the provisions of the Constitution by the returned candidate. Learned counsel for the petitioner further submitted that any breach/non-compliance of the constitutional provisions by successful candidate in the election held under the Act shall enable the High Court to declare his election void with reference to the provisions contained in Sections 100(1)(d)(iv) of the Act as the word Constitution used therein is general, purpose oriented and cannot be limited to the constitutional provisions referred to in Section 36 of the Act. In this connection, reliance was placed on the Constitution Bench judgment in the case of Mohindar Singh Gill Versus Chief Election Commissioner, reported in AIR 1978 Supreme Court 851, paragraphs-81, 82, 83. Aforesaid submissions made on behalf of the petitioner has also been incorporated in the written submissions filed on his behalf, which is on record.

4. Learned counsel for the sole respondent has opposed the prayer and submitted with reference to the averments made in Paragraphs 18-31 of the Election Petition that the allegation set out therein do not contain concise statement of material facts, as is required by, the mandatory provision of Section 83 (1)(a) of the Act. Merely quoting the provisions of law is not the concise statement of material facts in absence of particulars constituting the allegation. From perusal of averments made in Paragraphs 18-31 of the Election Petition it does not appear that any concise statement of material facts have been stated therein as the description of the properties of the first wife of the sole respondent, Smt. Sunita Devi said to have been suppressed by the sole respondent in his affidavit filed along with the nomination paper has not been mentioned in any of the paragraphs of the Election Petition particularly in Paragraphs 18-31. With reference to the aforesaid submission it is submitted that the Election Petition being too vague and not containing the concise statement of material facts and particulars, as is required under Section 83(1) of the Act is fit to be dismissed.

5. Learned counsel for the respondent further submitted that besides the pleadings in the Election Petition being vague and not containing concise statement of material facts and particulars the entire deposition of the election-petitioner is also too vague and general in nature as in his evidence also the election-petitioner has

failed to disclosed any property of Smt. Sunita Devi, first wife of sole respondent whose assets and liability the sole respondent is charged to have concealed is neither made out nor proved.

6. Learned counsel for the respondent further submitted that Rule 4-A and Form 26 of the Conduct of Election Rules, 1961 (hereinafter referred to as the "Rules") only require the candidate to furnish his antecedent in Form 26, the affidavit to be filed by the candidate at the time of submission of his nomination paper. Order of the Election Commission requiring the candidate to furnish the description of the assets and liability of self, spouse and dependents in the affidavit filed along with the nomination paper having been issued by the Election Commission under Article 324 of the Constitution has no force of law and the election of the sole respondent cannot be set aside for his failure to furnish the details of the assets and liability of his first wife, Smt. Sunita Devi in the affidavit filed along with the nomination paper of the sole respondent. Reliance in this connection has been placed on the judgment of the Hon'ble Supreme Court in the case of Lakshmi Charan Sen and others Vs. A.K.M. Hassan Uzzaman and others, reported in A.I.R. 1985 Supreme Court 1233, paragraph 21, equivalent to (1985) 4 SCC 689, paragraph 22, which is quoted herein below for ready reference:

"One of the questions which was debated before us and to which we must now turn, is whether the directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Acts of 1950 and 1951. There is no provision in either of these Acts which would justify the proposition that the directions given by the Election Commission have the force of law. Election laws are self-contained codes. One must look to them for identifying the rights and obligations of the parties, whether they are private citizens or public officials. Therefore, in the absence of a provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act *ex debito justitiae*, in the sense that, it can take steps or direct that steps be taken over and above those which it is under an obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the election law. To take a simple example if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provision of a

law. Leaders of political parties who were asked to be invited by the Election Commission cannot challenge the process of election on the ground that the directive issued by the Election Commission was violated by the Chief Electoral Officer. The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual. In the instant case, the Chief Electoral Officer carried out faithfully the directions issued by the Election Commission. But, even if he had not, he could not be accused of disobeying a law."

7. With reference to the judgment of the Hon'ble Supreme Court in the case of Lakshmi Charan Sen (*supra*) learned counsel for the respondent submitted that in the said decision the Hon'ble Supreme Court was considering direction issued by the Election Commission of India to the Chief Electoral Officer of West Bengal to revise the electoral roll before the election. Such direction was complied with in part. After the election several petitions were filed including Election Petition to declare the election void on the ground of non-compliance of direction issued by the Election Commission of India to completely revise the Electoral Roll. The Hon'ble Supreme Court rejected such plea and categorically held that the election cannot be declared void for non-compliance of the direction of the Election Commission of India to fully revise the electoral roll as such direction cannot be equated with law. It is submitted with reference to the law laid down by the Hon'ble Supreme Court in the case of Lakshmi Charan Sen (*supra*) that for the so called non-compliance of furnishing the description of the assets and liability of the first wife of sole respondent in the affidavit filed along with the nomination paper election of the sole respondent cannot be declared void. In this connection it is further submitted that Judge trying an Election Petition is merely a creature of the Statute, in the instant case, the Act and he has to try the Election Petition in terms of the jurisdiction vested in him by or under the Act. The Judge trying the Election Petition does not possess power under common law or equity. In this connection learned counsel has further relied on the judgment of the Hon'ble Supreme Court in the case of Jyoti Basu and others Vs. Debi Ghosal

and others, reported in A.I.R. 1982 Supreme Court 983 paragraph 8, equivalent to (1982) 1 Supreme Court Cases 691, which is quoted hereinbelow for ready reference :

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special Jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So the Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute. We are concerned with an election dispute. The question is who are parties to an election dispute and who may be impleaded as parties to an election petition. We have already referred to the scheme of the Act. We have noticed the necessity to rid ourselves of notions based on common law or equity. We see that we must seek an answer to the question within the four corners of the statute. What does the Act say?"

8. It is submitted with reference to the aforesaid quotation that the Act is complete and self contained code within which election to Parliament and the State Legislature has to be conducted and challenged by raising election dispute strictly in accordance with the provisions

of the Act and the Rules framed thereunder. It is submitted with reference to the law laid down by the Hon'ble Supreme Court in the case of *Jyoti Basu* (supra) that the said judgment relates to joining of the then Chief Minister *Jyoti Basu* and two other ministers as party respondent in the Election Petition. Sri *Jyoti Basu* and two other ministers filed a petition before Calcutta High Court in the said Election Petition to delete their names from the array of respondents but the Calcutta High Court dismissed the petition of *Jyoti Basu* and two others on the ground that they were proper parties so their names should not be struck off from array of respondents. Aforesaid order of the High Court was challenged by Sri *Jyoti Basu* and two others by filing S.L.P. in the Hon'ble Supreme Court which was allowed by the Hon'ble Supreme Court and Sri *Jyoti Basu* and two others were directed to be deleted from array of respondents as they were not required to be impleaded as respondent to the election petition under Section 82 and 86(4) of the Act for the reason that they were neither contesting nor returned nor any other candidate in the impugned election against whom allegation of corrupt practice was made.

9. It is further submitted by the learned counsel for the respondent that the two decisions of the Hon'ble Supreme Court rendered in the case of Association for Democratic Reforms and People's Union for Civil Liberties (PUCL) (supra) have emphasized the importance of right to information, as read into the contents of Article 19(1) (a) of the Constitution, calling upon the candidate seeking election to Parliament/legislature of the State to disclose his antecedent, assets, liabilities of self, spouse and dependents but the aforesaid two judgments does not provide for any punishment to the candidate for its non-compliance. According to learned counsel for the respondent the aforesaid two judgments in the case of Association for Democratic Reforms, People's Union for Civil Liberties (supra) are silent on the aspect of punishment to the candidate who failed to disclose the details of the assets and liability of the self, spouse and other dependents in the affidavit filed along with the nomination paper and in appreciation of such fact the election of a candidate not disclosing the details of the assets and liability of the self, spouse and dependents in the affidavit annexed along with the nomination paper should not be declared as void for non-compliance of Article 19(1)(a) of the Constitution, by the High Court under Section 100(1)(d)(iv) of the Act as Section 100(1)(d)(iv) of the Act does not specifically mention Article 19(1)(a) of the Constitution but only refers to the word "Constitution" which is too vague and general term.

10. Learned counsel for the respondent next submitted with reference to Section 36 of the Act that the intention of the Parliament is very clear not to set aside the election of a candidate on the ground of non-compliance of Article 19(1)(a) of the Constitution otherwise

Article 19(1)(a) of the Constitution should have been included in Section 36 of the Act which provide for rejection of nomination paper by the Returning Officer. In this connection it is further pointed out that the Returning Officer lacks authority and jurisdiction to reject the nomination paper of candidate whose affidavit supporting the nomination paper does not contain the assets, liability of the candidate, spouse and dependents. It shall, however, be travesty of justice if the election of the candidate who did not disclose assets, liability of self, spouse and dependents in the affidavit supporting the nomination paper, is set aside later under Section 100(1)(d)(iv) of the Act on the ground of non-compliance of Article 19(1)(a) of the Constitution for not furnishing the assets, liability of self, spouse and dependents in the affidavit supporting the nomination paper.

11. Learned counsel for the respondent further submitted that if the election of the Returned Candidate is set aside for non-compliance of Article 19(1)(a) of the Constitution such action shall tantamount to usurpation of the legislative power by the trying Judge contrary to the mandate of Section 36 of the Act. Learned counsel further submitted that the provisions of Article 19(1)(a) of the Constitution is directory and not mandatory as it does not provide for any punishment/penalty for its non-compliance. Learned counsel for the respondent with reference to the judgment of the Kerala High Court in the case of *Mani C. Kappan Vs. K.M. Mani*, reported in 2007(1) KLT 228 further submitted that Election Petition filed calling in question election of the successful candidate as void under Section 100(1)(d)(iv) of the Act on the ground that the elected candidate filed a false affidavit along with his nomination paper suppressing material information omitting the dues he owed to the Tourism Department of the Government violating the order of the Election Commission of India dated 27-3-2003 asking the candidate to furnish assets and liabilities in the affidavit filed along with the nomination paper was dismissed holding that the orders issued by the Election Commission under Article 324 of the Constitution cannot be treated as provisions of the Constitution.

12. Learned counsel for the respondent finally submitted that the election of the Returned Candidate should not be lightly interfered with. In this connection he relied on the Constitution Bench Judgment of the Hon'ble Supreme Court in the case of *Jagan Nath Vs. Jaswant Singh and others*, reported in A.I.R. 1954 Supreme Court 210 paragraph 7, which is quoted hereinbelow for ready reference:

"The general rule is well settled that' the statutory requirements of election law must be strictly observed and that an election contest is not an action at law or a suit in equity but is a purely statutory proceeding unknown to the common law and that the court possesses no common law power.

It is also well settled that it is a sound principle of natural justice that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. None of these propositions however has any application if the special law itself confers authority on a Tribunal to proceed with a petition in accordance with certain procedure and when it does not state the consequences of non-compliance with certain procedural requirements laid down by it. It is always to be borne in mind that though the election of a successful candidate is not to be lightly interfered with, one of the essentials of that law is also to safeguard the purity of the election process and also to see that people do not get elected by flagrant breaches of that law or by corrupt practices. In cases where the election law does not prescribe the consequence or does not lay down penalty for non-compliance with certain procedural requirements of that law, the jurisdiction of the Tribunal entrusted with the trial of the case is not affected."

Aforesaid submissions made on behalf of sole respondent has also been incorporated in the written submissions filed on his behalf, which is on record.

13. In the light of the submissions made by the counsel for the parties noted above, the pleadings filed and evidence led by them is to be scrutinized. Election petitioner is an elector from Babubarhi Assembly Constituency which is one of the six segments of the 7 Jhanjharpur Parliamentary Constituency. His name has been included in the voter-list at Serial No. 262 of Part No. 63 of Babubarhi Assembly Constituency. He has filed this Election Petition questioning the validity of the election of the sole respondent from 7 Jhanjharpur Parliamentary Constituency held on 23-4-2009 on the ground that the sole respondent while submitting his nomination paper violated the right to information of the electors of the said constituency including that of the petitioner as the sole respondent intentionally and deliberately withheld information about the existence of his first wife Smt. Sunita Devi and the five children (three sons and two daughters) born through her and their assets and liabilities although the children born through her are dependent on him from the affidavit dated 31-3-2009, Exhibit-6 which the sole respondent filed before the Returning Officer supporting the nomination paper in compliance of the order of the Hon'ble Supreme Court in the case of Association for Democratic Reforms, People's Union for Civil Liberties (supra) and the consequential order dated 27-3-2003 issued by the Election Commission of India. For such violation his election is fit to be set aside under Section 100 (1)(d)(iv) of the Act. Aforesaid assertion has been made in paragraphs 23, 24, 26, 27, 29, 30, 31, 33, 34 of the Election

Petition. Reliance in this connection has also been placed over paragraphs 10, 15, 17, 18 of the examination in chief of the election petitioner and the affidavit dated 31-3-2009, Exhibit-6 of the sole respondent filed along with his nomination paper before the Returning Officer indicating the assets and liabilities of self (sole respondent) and his second wife Smt. Arti Mandal.

14. Perusal of the affidavit dated 31-3-2009, Exhibit-6 clearly indicates that thereunder the assets and liability of only the sole respondent and his second wife Smt. Arti Mandal has been mentioned. The said affidavit does not even state about the existence of the first wife and the children born through her.

15. In the written statement the sole respondent has pleaded that the election petition is fit to be dismissed under Section 86(1) of the Act for non compliance of the mandatory provisions of Sections 81, 82, 117 of the Act. It has been further averred in the written statement that the election petition is fit to be dismissed for the failure of the petitioner to make concise statement of material facts by resorting to the provisions under Rule 11 of Order VII of the Code of Civil Procedure. In Paragraph-21 of the written statement it has been stated that the Hon'ble Supreme Court in its judgment dated 2-5-2002 passed in the case of Association for Democratic Reforms and another (supra) never directed the candidate seeking election to Parliament and legislature of the State to disclose assets and liabilities of self, spouse and other dependents. Aforesaid statement in paragraph 21 of the written statement appears to be error of record in view of the direction of the Hon'ble Supreme Court contained in sub paragraph (III), (IV) of Paragraph 48 of the judgment of the Hon'ble Supreme Court in the case of Association for Democratic Reforms and another (supra) which clearly indicate that the Hon'ble Supreme Court directed the Election Commission to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution from each candidate seeking election to Parliament or State Legislature information about his assets (movable, immovable, bank balance etc.), liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues. In Paragraph 24 of the written statement averment has been made that there is no provision either under the Act or the Rules to reject a nomination paper for non-compliance of the provisions of Section 33A of the Act. In this connection reference has been made to Section 36 of the Act which does not authorize the Returning Officer to reject the nomination paper of a candidate who has not complied with the provisions of Section 33A of the Act and the directions of the Hon'ble Supreme Court to the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or State Legislature details of his assets and liabilities. In paragraph 26 of the written statement averment has been made that the sole

respondent has not deliberately suppressed information about the assets and liabilities of his first wife, Smt. Sunita Devi and the Children born through her which was on account of ignorance but in any case non-disclosure of assets and liabilities is a petty matter which shall not affect the merit of the nomination paper. In paragraphs 27, 28 averment has been made that Section 36 of the Act does not include Article 19 of the Constitution authorizing the Returning Officer to reject the nomination paper for non-compliance of Article 19 of the Constitution.

16. In paragraph 4 of the examination in chief sole respondent has stated that he did not conceal the assets and liability of his spouse in the prescribed affidavit attached to his nomination paper. Sole respondent further stated in the same paragraph that the election petitioner also did not specifically state either in the pleadings made in the election petition or in his deposition details of the assets and liability of the spouse of the sole respondent which was concealed by the sole respondent in his affidavit attached to the nomination paper. In Paragraph 8 of his cross-examination the sole respondent has stated that he had filed two affidavits at the time of filing of his nomination paper, copy whereof is annexed as Annexure-3 from pages 28-32, 33 of the election petition. In Paragraphs-9, 10 of his cross-examination sole respondent has stated that he does not remember to have filed any third affidavit at the time of filing of his nomination paper. In Paragraph 11 of his cross-examination sole respondent has stated that under Paragraph-B of the affidavit, Annexure-3 he had given details of the assets of his wife Arti Mandal. In Paragraph 12 of the cross-examination the sole respondent stated that during the hearing of the election petition he is not required to inform this Court about the number of his wives as the present proceeding is about the validity of his election for which the number of his wives hardly has any relevance. In Paragraph 13, 14 of the cross-examination the sole respondent stated that Form at page 30 of the election petition asking the election candidate to provide the name of the spouse (s) for the purpose of declaration of his/her assets is contrary to the provisions of the Act and the Rules. In Paragraphs 17, 18 of his cross-examination the sole respondent stated that he has only one wife, namely, Smt. Arti Mandal and Smt. Sunita Devi is not his wife which statement was withdrawn by the sole respondent on 11-4-2011 when he stated before this Court, as would appear from the order-sheet of this Court of the same day (11-4-2011) that he admitted before this Court that he has two wives, namely, M/s. Arti Mandal and Sunita Devi. In Paragraph 25 of his cross-examination the sole respondent stated that his both wives are residing together either at the village home or at Patna residence. In paragraph 26 of the cross-examination the sole respondent stated that he has got five children (three sons and two daughters) from his first wife.

17. It appears from consideration of the pleadings filed and the evidence led by the parties and discussed above that sole respondent contested election from 7 Jhanjharpur Parliamentary Constituency which was held on 23-4-2009 for which he filed nomination paper on 31-3-2009 supported by the affidavit, Annexure-3 to the Election Petition which has also been marked as Exhibit-6 in these proceedings declaring assets, liabilities of self and second wife Smt. Arti Mandal contrary to the direction of the Hon'ble Supreme Court rendered under judgment dated 2-5-2002, 13-3-2003 passed in the case of Association for Democratic Reforms, People's Union for Civil Liberties (supra) in compliance whereto Election Commission had issued order dated 27-3-2003 calling for information on affidavit from each candidate seeking election to Parliament or State Legislature about the antecedent, assets, liabilities of candidate, spouse and other dependents. Sole respondent, however, did not disclose in the affidavit filed along with the nomination paper the assets and liabilities of his first wife Smt. Sunita Devi and the children born out of the said wedlock. In this connection he himself has stated in Paragraph 26 of the written statement that the suppression about the assets and liabilities of his two wives in the affidavit was not deliberate but on account of ignorance and non-disclosure being a petty matter should not affect the merit of the nomination paper. Non-disclosure of the assets and liabilities of the first wife Smt. Sunita Devi from the affidavit supporting the nomination paper being admitted and being explained on the ground that the Form seeking such disclosure is contrary to the provisions of the Act and the Rules this Court has to consider the effect of such non-disclosure in the light of the provisions of the Act, the Rules and the direction of the Hon'ble Supreme Court rendered under Judgment dated 2-5-2002, 13-3-2003 passed in the case of Association for Democratic Reforms, People's Union for Civil Liberties (PUCL) (supra) and the consequential order issued by the Election Commission of India dated 27-3-2003 and the submissions raised by the counsel for the parties.

18. Hon'ble Supreme Court of India under judgment dated 2-5-2002 passed in the case of Association for Democratic Reforms read right to information as a facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution and directed the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or State Legislature about the antecedent, assets and liabilities of the candidate, spouse and dependents. For giving effect to the judgment of the Hon'ble Supreme Court in the case of Association for Democratic Reforms (supra) the Election Commission of India issued order dated 28-6-2002 authorizing the Returning Officer to reject the nomination paper of any candidate seeking election to the Parliament or State Legislature who furnished any wrong, incomplete

or suppressed material information in regard to his antecedent, assets and liabilities of self, spouse and dependents in the affidavit filed along with the nomination paper. The Parliament in order to give effect to the direction of the Hon'ble Supreme Court given in the case of Association for Democratic Reforms (supra) amended the Act inserting Sections 33A, 33B by Act No. 72 of 2002 with effect from 24-8-2002. Section 33A required candidate seeking election to Parliament/House of Legislature of State to furnish information required under the Act and the Rules as also his antecedent in the affidavit to be filed along with the nomination paper. Section 33B of the Act required the candidate to disclose only those informations which are required under the Act and the Rules and no other information directed to be disclosed/furnished under judgment, decree or order of any Court. Validity of Section 33B of the Act was challenged before the Hon'ble Supreme Court in the case of People's Union for Civil Liberties (PUCL) (supra). Under judgment dated 13-3-2003 Section 33B was held ultra vires with prospective effect i.e. from the date of the judgment after observing in paragraphs 73, 123 of the said judgment that no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment of the Hon'ble Supreme Court in the case of Association for Democratic Reforms and another (supra). The direction of the Election Commission to the Returning Officer to reject the nomination paper after conducting summery enquiry at the time of scrutiny of the nomination paper for furnishing wrong or concealing material information in the case of assets and liabilities of the candidate spouse and dependent was not approved by the Hon'ble Supreme Court and the Commission was directed to revise its instruction dated 28-6-2002. In compliance of the directions of the Hon'ble Supreme Court rendered under judgment dated 13-3-2003 passed in the case of People's Union for Civil Liberties (PUCL) (supra) the Election Commission has issued order dated 27-3-2003 revising its earlier order dated 28-6-2002 withdrawing the authority given to the Returning Officer to reject the nomination paper of candidate furnishing wrong or suppressing material information about assets, liability of self, spouse and dependents after conducting summery enquiry. In the light of the judgment of the Hon'ble Supreme Court dated 13-3-2003 and the order of the Election Commission of India dated 27-3-2003, the Returning Officer, in my opinion, rightly did not reject the nomination paper of the sole respondent on the ground that he violated the right to information of the electors of 7 Jhanjhpur Parliamentary Constituency by suppressing the assets and liabilities of his first wife Smt. Sunita Devi. Sole respondent, however, is liable for non-compliance of Article 19(1)(a) of the Constitution as he failed to furnish the assets and liabilities of his first wife Smt. Sunita Devi in the affidavit dated 31-03-2009, Exhibit-6 filed supporting his nomination paper. The word Constitution used in Section 100(1)(d)(iv) of the Act is generic, purpose oriented

and cannot be controlled by the provisions of the Constitution enumerated in Section 36 of the Act. Notwithstanding his success in the election held on 23-04-2009 from 7 Jhanjhpur Parliamentary Constituency the fact remains that the sole respondent is responsible for infracting the right to information of the electors of the said constituency as declared by the Hon'ble Supreme Court in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) as a facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution, for such non-compliance, sole respondent has to reap the consequence for violating the right to information of the electors of 7 Jhanjhpur Parliamentary Constituency as he did not include the assets and liability of his first wife Smt. Sunita Devi in the affidavit dated 31-3-2009 filed along with the nomination paper.

19. The submission made by the counsel for the respondent with reference to the judgment of the Hon'ble Supreme Court in the case of Lakshmi Charan Sen (supra) and Jyoti Basu (supra) that the direction of the Election Commission of India to the Chief Electoral Officer cannot be equated with law and the election of the sole respondent cannot be declared void for non-compliance of the directions of the Election Commission contained in the order dated 27-3-2003 appears to be misconceived in view of the fact that in the case relied upon by the counsel for the respondent, the Election Commission of India suo motu issued instruction to the Chief Electoral Officer of West Bengal to revise the Electoral Roll but without effecting complete revision of the Roll the elections were held which was impugned before the Court and the Court observed that for failure to effect complete revision of the Roll the elections already held cannot be invalidated. In the case in hand Election Commission issued order dated 27-3-2003 for enforcing the directions of the Hon'ble Supreme Court given under judgment dated 2-5-2002, 13-3-2003 in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) whereunder the Hon'ble Supreme Court declared right to information as a facet of Article 19(1)(a) of the Constitution and directed the Election Commission to call for information on affidavit from each candidate seeking election to Parliament or State Legislature about his antecedent, assets and liabilities of self, spouse and dependents so as to enable the voter to exercise his choice about the candidates contesting the poll after knowing the antecedents and the assets and liabilities of not only the candidate but also his spouse and dependents for ensuring transparency, accountability and probity in public life. The two orders of the Hon'ble Supreme Court declaring right to information as facet of right to freedom of speech and expression enshrined in Article 19(1)(a) of

the Constitution being the law of the land under Article 141 of the Constitution of India is binding not only on the Election Commission of India but also on the candidates contesting the election to the parliament or the State Legislature. Any breach in observing the directions of the Hon'ble Supreme Court contained in judgment dated 2-5-2002, 13-3-2003 in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra), may be on account of ignorance, as has been stated in paragraph 26 of the written statement is a breach and non-compliance of the provisions of Article 19(1)(a) of the Constitution and for such breach and non-compliance the candidate who has not complied and breached the right to information of electors and has won the election has to suffer the consequence of non-compliance and the breach.

20. Reliance placed by the counsel for the sole respondent over the judgment of the Kerala High Court in the case of Mani C. Kappan (supra) also appears to be misconceived in view of the fact that thereunder Lordship of the Kerala High Court has held that failure of the elected candidate not to disclose his liabilities in the affidavit annexed with the nomination paper is not violation of the Constitution but violation of the orders of the Election Commission issued under Article 324 of the Constitution

proceeds without taking into account that under the aforesaid two judgments of the Hon'ble Supreme Court dated 2-5-2002, 13-3-2003 passed in the case of Association for Democratic Reforms (supra), People's Union for Civil Liberties (PUCL) (supra) the Hon'ble Supreme Court declared right to information as facet of right freedom of speech and expression enshrined in Article 19(1)(a) of the Constitution and any breach/ non-compliance thereof is breach of Constitution and not the order of the Election Commission of India which is law of the land under Article 141 of the Constitution.

21. In the light of discussions above, the election of sole respondent from 7 Jhanjharpur Parliamentary from Constituency held on 23-04-2009 is declared to be void.

Patna High Court, Patna.

Dated the 25th day of November, 2011

Sd./-

(V. N. SINHA, J.)

[No. 82/BR-HP/(4/2009)/2013]

By Order,

R. K. SRIVASTAVA, Principal Secy.